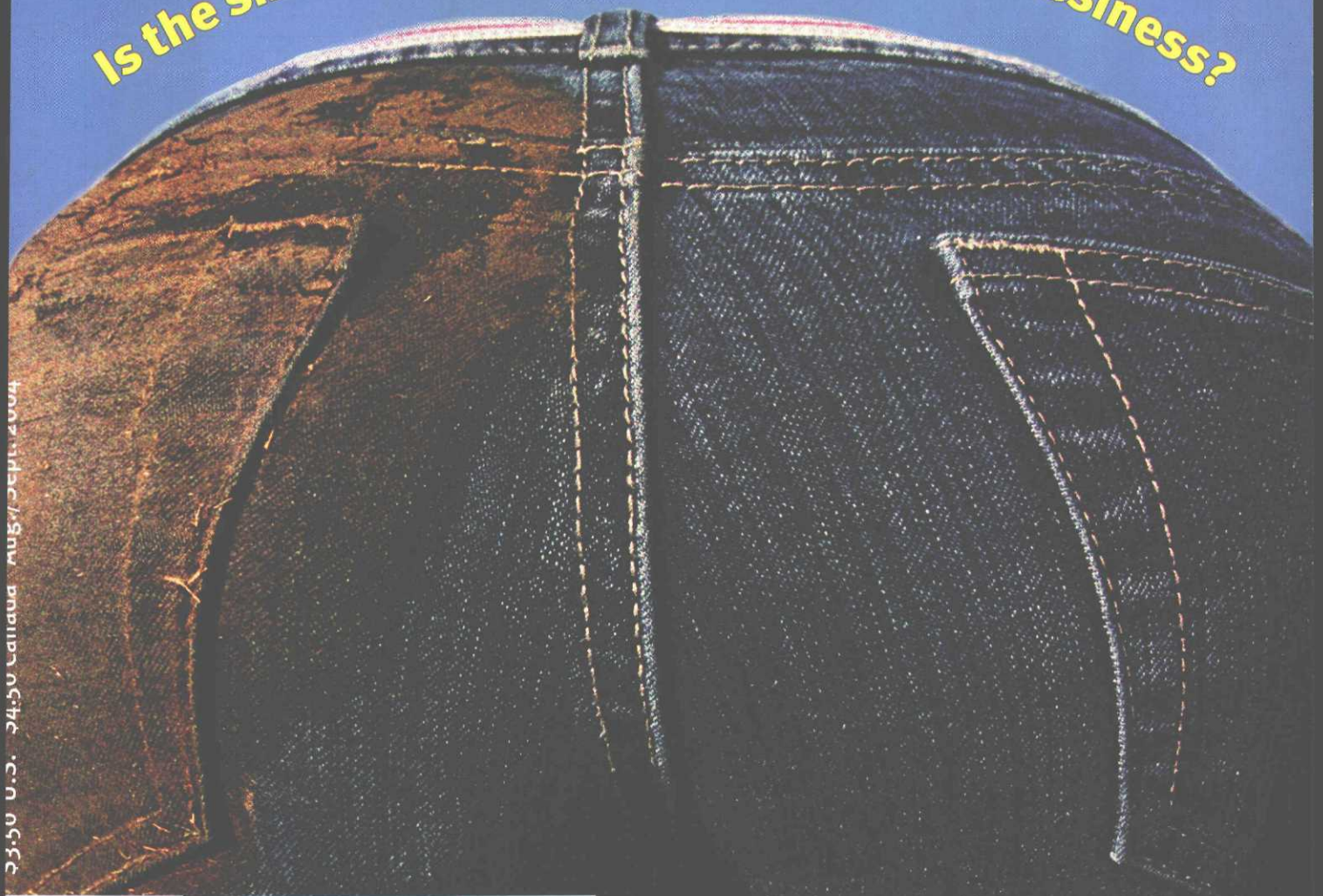
reason

Free Minds and Free Markets

Scientific Sex Differences
John Perry Barlow 2.0
Watergate Blowback
Iran's Chatroom Rebels

The War on Fat

Is the size of your butt the government's business?



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Free Minds and Free Markets

August/September 2004
Volume 36, No. 4

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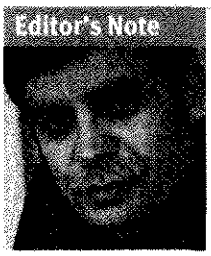

Battle of the Bulge

FOR MORE THAN a decade, I weighed about 35 pounds more than I wanted to. During the last year or so, through a combination of diet, exercise, and calorie-burning irritability due to diet and exercise, I've taken the 35 pounds off. Yet with a "body mass index" (BMI) of 25, I'm still a borderline tub of lard, at least according to government-sanctioned definitions.

Your BMI is calculated by dividing your weight in kilograms by the square of your height in meters; a BMI of 25 or more means you're overweight, and one of 30 or more means you're obese. (Sorry to be the one to tell you.) Back in the old days—before the late, controversial low-carb guru Dr. Atkins sparked what appears to be a permanent Diet Revolution—nobody talked about BMI, and I half suspect it's a Trojan horse to finally sneak the metric system into Fortress America.

According to government BMI stats, two-thirds of adult Americans are overweight. Indeed, a whopping 20 percent of us are obese. But here's the real question: Should my weight—or yours—be a public policy issue?

In our cover story, Senior Editor Jacob Sullum (who also has a BMI of 25, by the way) reports from the front lines of "The War on Fat," the latest attempt to save us from our own worst impulses (page 20). What he finds is appalling. That's not because of too many stretch marks or too many Twinkies. It's because of folks like Kelly Brownell, the Yale psychology professor best known for advocating taxes for fattening foods; the dietary puritans at the Center for Science in the Public Interest, who rail against McDonald's as if it were the Church of England; and John Banzhaf, the camera-hogging trial lawyer who brags about helping to launch "successful fat lawsuits."

Forget the traditional tonics of diet and exercise that worked for me. Or minimizing the public funding of health care that makes your lunch everybody else's business. Such characters are working to fight the fat through legislation, regulation, censorship, taxes, and litigation.

Like the ongoing wars against tobacco and illegal drugs, writes Sullum, the escalating war on fat is driven by "a collectivist philosophy that says the government has a duty to protect 'public health' by discouraging behavior that might lead to disease or injury. It also reflects an anti-capitalist perspective that views people as helpless automatons manipulated [by] big corporations... The anti-fat crusaders want to manipulate us too, but for our own good."

So we won the Cold War only to declare war on cold cuts. Today's fat warriors believe, with New York University's Marion Nestle, that "diet is a political issue." If so, asks Sullum, what isn't? "The same logic suggests the government should take an interest in how much sleep you get, what kind of sex you have, and whether you floss regularly." That's an unappetizing thought, but it's the sort of thing that may soon be forced down our throats.

Nick Gillespie

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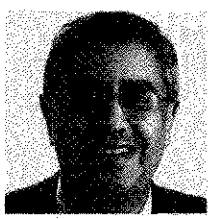
Prakash Loungani

MAIA SZALAVITZ remembers the precise day she stopped using heroin: August 4, 1988. Having wrestled with addiction herself, Szalavitz is acutely aware that it "isn't something that just *happens* to you; you have to make a lot of choices for it to happen." So she's especially incensed by the misguided assumptions behind aggressive anti-drug policies that make doctors reluctant to treat pain effectively, a problem she chronicles in "Dr. Feelscared" (page 32). "It bothers me that addictions like mine, at least partly the result of poor choices, are used to rationalize denying medication to people in pain," she says. Szalavitz is a senior fellow at the media watchdog group STATS; she is writing a book on "behavior modification" camps for juveniles.

JOHN BLUNDELL has always kept an eye on South Africa, where much of his family lives. But he didn't visit the country until 1985, when he wrote a story on the region for **reason**. Last summer, Blundell, the director general of London's Institute of Economic Affairs, returned to take stock of South Africa today. He gives his optimistic account in "Try, Beloved Country" (page 50).

Trained as an economist, PRAKASH LOUNGANI was convinced of the benefits of globalization by his review of the academic literature. But what really hammered it home, he says, was going back to his hometown of Bombay during the last 15 years and seeing how trade had "really freed that society." So he was gratified to find that same mix of empirical rigor and powerful anecdotes in Jagdish Bhagwati's *In Defense of Globalization*, which he reviews this month ("Globalization Without Tears," page 68). Loungani is a contributing editor for the International Monetary Fund's *IMF Review* and a former Federal Reserve Board staff economist.

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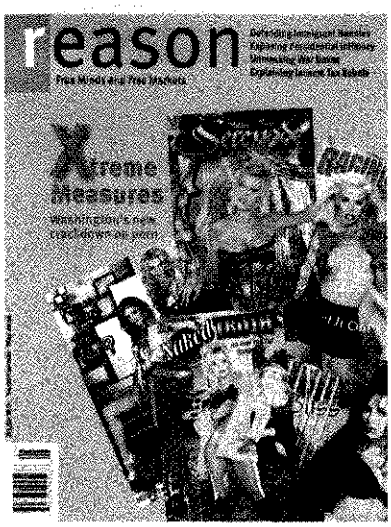

Xtreme Measures

Back in 1986, **reason** had a cover story on the Meese Pornography Commission. Being a strong opponent of censorship, soon after reading that article I left the Republican Party. Now, 18 years later, **reason** has another article ("Xtreme Measures," May) on how a Republican Justice Department is going after pornography. The more things change, the more they stay the same.

The only difference: This time, there is no disillusioning break with the GOP. The Bush administration has given us irresponsible economic policies, lies over Iraq, and pandering to homophobes. That it wants to control what people watch is just one more reason I will be voting for its retirement this November.

Robert Fisher
Corona, AZ

"It's So Simple, It's Ridiculous"

I read with interest Brian Doherty's article on the tax protest movement ("'It's So Simple, It's Ridiculous,'" May), particularly since I am a friend of one of the protesters he profiled, Vernie Kuglin. I think the article was fair and accurate. One point I think should be made clear, though, is that nonpayment of taxes is both a civil and a criminal wrong. A criminal defendant has the defense of lacking *mens rea*, a finding of criminal intent. Acquittal on criminal charges has no effect on the liability to pay taxes, where a taxpayer's understanding of the law is irrelevant.

Kuglin's not-guilty verdict was based on liberal jury instructions that said that no matter how kooky her belief system seemed, if she sincerely believed she was not required to file, she did not have the mens rea required for conviction. This follows a U.S. Supreme Court decision involving a tax protester some years ago and is consistent with our view that intentionality must underlie a criminal act.

Those of us who know Vernie believe in her sincerity. Of course, the defenders of the Alamo were also very sincere.

Mike Good
Memphis, TN

As Mario Puzo wrote at the end of *Fools Die*, "We suffer for nothing. Our own death wish is our only real tragedy." This is probably the main reason why otherwise law-abiding people allow themselves to become entangled in the tax protest movement. Kind of like skydiving, but with a defective parachute.

People like Irwin Schiff, the Patriot Network gurus, the "un-tax" quacks, and the poor sods who believe them suffer not only from a sense of perceived injustice but from a desire to create a crisis in their lives. While some of the arguments against the income tax that Brian Doherty outlined in his article contain a grain of truth, the reality is that when taken in context none of them hold up in court.

Here's a public service announcement from someone who learned the hard way: If you are involved in a tax protest group, especially if you are a professional or a business owner, and are even remotely considering taking a firm stand against the income tax—by not filing, filing a "zero" return, not paying, etc.—then do yourself the biggest favor of your life and stop playing in traffic.

Tom Menendez
Sellersburg, IN

Traditional Prejudices

I was dismayed to read Cathy Young's unbelievably shoddy account of the writings of Aleksandr Solzhenitsyn ("Traditional Prejudices," May). Despite a deceptively calm and authori-

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tative tone, she engages in nothing less than character assassination. She eschews anything that resembles explication de texte and instead relies upon the prosecutorial-conspiratorial musings of Semyon Reznik. Even more damning, she ignores everything in Solzhenitsyn's writings that might militate against her claims.

A reader of her column would never learn about Solzhenitsyn's condemnation of "scandalous restrictions" against Jews under the Russian old regime, his criticisms of the Russian state for its "impardonable inaction" in anticipating and responding to brutal anti-Jewish pogroms, his admiration for Pyotr Stolypin's efforts to end the Jewish disabilities, or his criticism of the White forces during the Russian Civil War for their inexcusable toleration of anti-Semitic violence and propaganda in territories under their control.

Nor would a reader learn anything about Solzhenitsyn's principled rejection of fascism and all its works, or his moving and somber discussion in Chapter 21 of *Dvesti Let Vmeste* (*Two Hundred Years Together*) of the Holocaust unleashed against Jews on Soviet territory.

Nor would one come across anything about Solzhenitsyn's admiration for Jews such as D.O. Linski, Iosif Bikerman, Michel Heller, Mikhail Agurski, Aleksandr Ginzburg, and Dora Sturman, nor about his highlighting of the "disproportionate" role played by Jews in the anti-Communist resistance of the 1960s and '70s.

Perhaps most egregious is Young's claim that the author of *The Gulag Archipelago* is somehow not a true friend of human liberty, that he is instead a partisan of a "traditionalist" collectivism. She simply ignores Solzhenitsyn's eloquent defense of the rule of law and the importance of local self-government to a healthy and well-constituted civic life.

More fundamentally, she shows no appreciation of the "personalism" that informs almost every page of *The Gulag Archipelago*. The portraits of freedom-loving individuals and indomitable souls such as the young Zoya Leshcheva, the defiant Anna Skripnikova, the committed escaper Georgi Tenno, and the religious poet Anatoli Silin are simply unforgettable.

As any serious reader of *Gulag* will immediately discern, Solzhenitsyn is no collectivist. It is dishonest, and worse, to accuse this honorable man of the monstrosity which is anti-Semitism or to facilely dismiss him as an enemy of human freedom.

Daniel J. Mahoney
Assumption College
Worcester, MA

Cathy Young replies: Daniel Mahoney charges that I maliciously failed to credit Solzhenitsyn for stating that the czarist regime in Russia was guilty of discriminating against and oppressing Jews (i.e., acknowledging the obvious) and for deploring the massacres of Soviet Jews by the Nazis. But surely that's setting the bar too low: One could acknowledge the evils of slavery and lynching and still be a racist.

Considering that Solzhenitsyn's purpose in writing *Dvesti Let Vmeste* was, in large part, to clear himself of the suspicions of anti-Semitism that have clouded his career, it's hardly surprising that he would meet these minimal requirements of decency. But his purportedly "balanced" treatment amounts to consistently seeking to minimize and mitigate Czarist Russia's mistreatment of Jews. As I showed in my column, even some reviewers who absolve Solzhenitsyn of bigotry, such as Richard Pipes and John Klier, acknowledge this fact.

The argument that Solzhenitsyn cannot be an anti-Semite because he admires certain Jews is equally feeble. Solzhenitsyn also has publicly expressed admiration for some notorious anti-Semites, such as the Slavophile writers Vladimir Soloukhin, Valentin Rasputin, and Vasily Belov.

Finally, Mahoney faults me for relying on "the prosecutorial-conspiratorial musings of Semyon Reznik." But he offers no challenge to Reznik's devastating evidence that Solzhenitsyn indeed penned an anti-Semitic tract in the 1960s—just as Solzhenitsyn has not, to my knowledge, offered any rebuttal to Reznik's case, or to his extensive critique of the historical distortions in *Dvesti Let Vmeste*.

Indeed, while Solzhenitsyn initially suggested that "The Jews in the USSR and the Future Russia" was a fabrication attributed to him by a lunatic, in his response to his critics (*Literaturnaya Gazeta*, October 22–28, 2003), he referred to the work as "stolen rough drafts from forty years ago," albeit allegedly distorted by "filthy falsification."

Like Mahoney (and, I might add, like Reznik), I admire the humanity that shines in Solzhenitsyn's early works. Alas, in later years it has been increasingly overshadowed by ideology. Solzhenitsyn's praise for Vladimir Putin, the ex-KGB man presiding over a blatant rollback of Russia's fledgling democracy, speaks volumes regarding the esteem in which he holds liberty.

reason news

This is our annual double issue. The next issue subscribers receive will be dated October.

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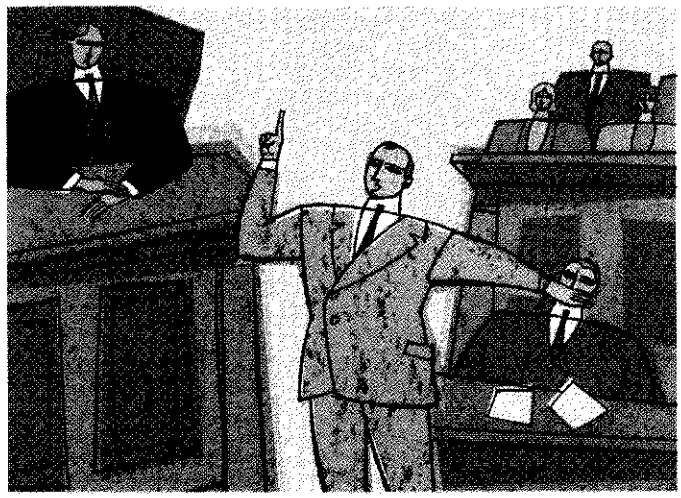
Online gambling crackdown; trouble for farm subsidies; RFID roundup; charge it to Uncle Sam!; banning same-sex contracts; segregation forever; fighting obesity with pork; who's right?

Challenging secrecy...in secret

Silent Suits

Julian Sanchez



ALMOST A YEAR ago, the satirical newspaper *The Onion* ran the headline "Revised Patriot Act Will Make It Illegal to Read Patriot Act." That restriction is still confined to the world of parody—but just barely.

In April the American Civil Liberties Union (ACLU) revealed that it had filed a lawsuit in the U.S. District Court for the Southern District of New York challenging the FBI's authority to issue national security letters, extrajudicial demands for information whose scope was expanded by the PATRIOT Act. But the announcement came weeks after the complaint was filed, because the case itself was subject to the sort of gag order that prevents those served with national security letters from talking about them.

Now the information sluice gates are open—sort of. Following negotiations with the government, the ACLU has released a highly redacted version of its complaint in the case of *[CENSORED] and ACLU v. Ashcroft*. According to lead counsel Jameel Jaffer, the group cannot even officially confirm that it has a client in the case, although the legible portions of the complaint appear to refer to an Internet access provider. Even the briefing schedule in the case was at one point deemed too sensitive to be posted, and it was temporarily pulled from the ACLU Web site.

It's difficult to make out the full substance of the suit through all the black markings, but the ACLU complains that the gag provisions of the law authorizing national security letters are vague and overbroad, and that the letters themselves violate the First, Fourth, and Fifth amendments. As Jaffer observes—and this case illustrates—a strict reading of the gag requirement would make it difficult, if not impossible, for parties served with national security letters to seek counsel to challenge them in court, let alone recruit scholars to file *amicus curiae* briefs.

Noting that part of the ACLU's mission is to alert the public to questionable uses of state power, Jaffer says, "Secrecy breeds abuse, and the secrecy is in many ways an abuse in itself. How many of the abuses at Abu

30 years ago in reason

"The army not infrequently lies to the volunteer, promising him many options but in practice determining his service path and duty station."

—David Brudnoy, "A Libertarian Critique of the Military"

"New York City today is skittering along on the momentum generated by an earlier and freer era. It could never get off the ground if it had to start in the condition it is in now."

—John Hospers, "The Life and Death of New York"

"The lobotomy literature is filled with references to how the husband says the wife is 'better than ever' now that she has brain damage. This same literature openly boasts of making 'good housewives.'"

—"Taking on the Mind Killers: An Interview With Peter Breggin"

"The [Equal Rights Amendment] deserves the support of libertarians because it will *remove* some...governmental intrusions...specifically by nullifying most of the 'protective' labor laws."

—Lynn Kinsky, "Libertarians and the ERA"

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Ghraib would have happened under more transparent conditions?"

Online gambling crackdown

Aiding and Betting

Jacob Sullum

IF YOU LIKE to gamble, you might want to go to 888.com, where you can play blackjack, poker, craps, slots, and roulette. If you prefer sports betting, try betonsports.com.

According to the U.S. Justice Department, publishing the previous paragraph may be a felony. Federal prosecutors say helping Americans find online casinos or sports betting operations could amount to "aiding and abetting" illegal gambling, a crime punishable by up to two years in prison.

Last year, Deputy Assistant Attorney General John G. Malcolm sent a letter to media trade groups warning that their members could be breaking the law by accepting ads for gambling sites. Meanwhile, Raymond W. Gruender, the U.S. attorney for the Eastern District of Missouri, convened a grand jury in St. Louis that started issuing subpoenas to companies that do business with the online gambling industry.

This campaign of intimidation already has yielded results. Since last fall several media companies, including Infinity Broadcasting, Viacom Outdoor, Discovery Networks, and Clear Channel Communications, have stopped running ads for online casinos and betting services. In April, Google and Yahoo!, two of the most widely used Web search engines, also caved. Although Google was vague about its motivation, Yahoo! said "a lack of clarity in the environment" made gambling ads "too risky."

The Justice Department maintains that online gambling is illegal under the 1961 Wire Act, even when the casino or betting parlor is located overseas. But since it's hard to prosecute gambling operations based in other countries (and since placing a bet is not necessarily illegal, depending upon the state where the gambler lives), the government is threatening middlemen instead. Given how broadly the Justice Department seems to be interpreting "aiding and abetting," it could bring charges against not just ad carriers but marketing consultants, banks, Internet service providers, telecommunications companies, computer professionals, and anyone else who facilitates online betting.

But middlemen can be offshored too. A few weeks after Google and Yahoo! said they would stop accepting gambling ads, the U.K.-based AskWinner.com, a casino information site, announced that it was stepping into the breach with "a new pay-per-visitor advertising solution."

Shariah comes to Canada

Judicial Choice

Jesse Walker

STARTING THIS YEAR, Muslims in Ontario can settle their disputes in religious Shariah courts. This development shocked pundits on both sides of the border: Andrew Sullivan wrote that it's "horrifying," the Muslim-bashing blog *Little Green Footballs* called it "dangerous and utterly wrong-headed," and various writers wondered whether this meant Canadian women could be stoned to death for adultery. But there's an important difference between Canada's Shariah courts and those of, say, Afghanistan: In Ontario, no one will be *forced* to follow Islamic law.

Indeed, Muslims there are simply setting up the same sort of voluntary institutions that Ontarian Jews have enjoyed for centuries. As Rabbi Reuven Tradburks told *The Washington Post*, traditional Jewish courts, known as *batei din*, "have been operating in Toronto for as long as Jews have been here." A less formalized Koranic arbitration system already exists in Ontario; the new Islamic Court of Civil Justice will merely make the process official, under the framework set by the Ontario Arbitration Act of 1991. Corporal punishment will be barred, and decisions that violate individual rights can be struck down by the public courts, so adulterers won't have to fear any stonings.

In the United States, citizens unhappy with the government's expensive and time-consuming courts enjoy a range of other options, from the American Arbitration Association to our own batei din to *Judge Judy*, *The People's Court*, and other products of the latest religion to take America by storm: reality television. They can even approach their local imam.

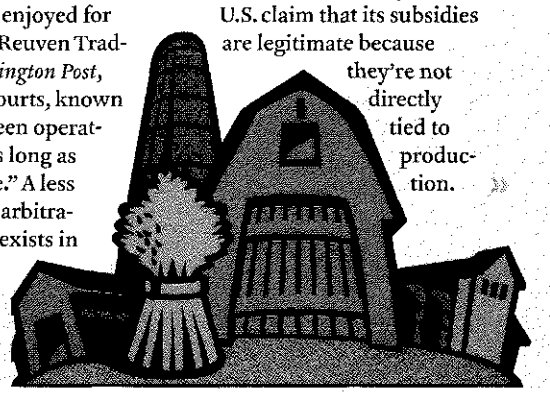
Trouble for farm subsidies

Cotton Belt

Jacob Sullum

KEN COOK, PRESIDENT of the Environmental Working Group, is happy. Bryan Edwardson, director of public policy at the agricultural giant Cargill, is worried. But both agree that a World Trade Organization (WTO) ruling against government aid to cotton farmers could be the beginning of the end for a wide range of agricultural subsidies.

Farmers in developing countries have long blamed U.S. cotton subsidies for encouraging overproduction and driving down world prices. In a report that at press time was expected to be finalized in June, a panel of three trade experts conclude that the subsidies violate WTO rules. The decision, which responds to a complaint filed by Brazil, the European Community, and a dozen other countries, rejects the U.S. claim that its subsidies are legitimate because they're not directly tied to production.



Quotes

"It made me long for the good old days when Republicans went to jail for taking bribes or covering up burglaries....Now they're under investigation for covering up massive social spending....It's like Oliver North running a secret Head Start program in the White House basement."

—Democratic Leadership Council President Bruce Reed, on suppression of the Medicare prescription drug benefit's true costs, at an April 27 Cato Institute forum

"Hopefully, if we pull up their pants, we can lift their minds while we're at it."

—Louisiana state legislator Derrick Shepherd, on his proposal to ban low-riding jeans, quoted in the April 22 New Orleans *Times-Picayune*

Source

In *Nineteen Eighty-Four*, records that contradicted the official version of events were dropped down "the memory hole." But in 2004 Russ Kick is there to catch inconvenient information on its way to oblivion and post it at thememoryhole.org. Kick made news in April when he obtained and posted more than 350 photos of the coffins of Iraq war casualties. Other features range from a younger John Kerry's investigation of narco-corruption to (on the lighter side) photographs of Henry Kissinger picking his nose.

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Brickbats

For years, those who work at the English National Opera have called each other "darling." But now they've been warned against using it: A new code of conduct says some may view the term as sexual harassment.

When Daniel Clauson spotted a man apparently trying to jimmy the door of a neighboring building, he called the cops. But officers from the Pinellas Park, Florida, police force mistakenly came to Clauson's home instead. When Clauson came out to tell them they'd made an error, they ordered him to lie on the ground. Then an officer shot his dog.

Competition among retailers has pushed the price of beer too low, according to the government of Norway, which maintains some of the highest alcohol taxes in Europe. To entice customers, some stores have been selling beer at a loss. The government says they have to stop or lose their licenses.

Zimbabwe has sent armed policemen to close all the country's private schools and send the children home, on the grounds that their fees are too high. The education minister says the schools set fees high to keep out blacks. In fact, the overwhelming majority of the students are black.

Many self-employed workers, especially young people, aren't paying into Japan's social security system because they don't think they'll get their money back. Contributions are 37 percent below where the government says they should be. The authorities have started a campaign to encourage reluctant young people to contribute to the program, but it has run into a few snags. It turns out three cabinet ministers are behind in their payments. Trade Minister Shoichi Nakagawa admits he hasn't paid into the system for 21 years.

When officials at Connecticut's York Correctional Facility learned that an inmate in a prison rehabilitative writing program had won a national writing award, they took swift action to recognize her achievement. They halted the program, ordered all hard drives used in the program erased, and demanded that all the disks be turned over to them. That cost several inmates up to five years of work.

Brian Kentwell has been pounding livestock and wild animals to death with a hoe. No, he's not a sadist—the animals have been injured in Australian irrigation channels. Previously, he would use a firearm to put down dying animals. But when Australia enacted new gun control laws several years ago, the use of firearms for "agricultural" purposes was precluded and Kentwell's license was revoked.

Police officials in Bel-Ridge, Missouri, say department officials are pressuring them to spend less time catching robbers and more time writing tickets. "When it comes down to it, money is what counts," says a department memo obtained by the *St. Louis Post-Dispatch*. "State cases do not generate money for the department. Municipal tickets do."

Charles Oliver

"This could mean problems for all domestic subsidy programs," Cook told *The New York Times*, "for corn, wheat, rice, everything that receives big direct payments from the United States Treasury." Edwardson likewise told the Minneapolis *Star Tribune*, "We think that this is a significant decision that may have repercussions in a lot of different areas with respect to domestic farm policy as well as the ongoing WTO negotiations." Farm subsidies in developed countries total about $300 billion annually, of which American farmers receive some $19 billion.

The U.S. government plans to appeal the cotton ruling, and it could be years before any penalties kick in. But the decision is expected to encourage further WTO challenges of farm subsidies and to strengthen the negotiating position of developing countries that are asking the U.S. to abide by its avowed free trade principles.

Trying to keep the chips down

RFID Roundup

Brian Doherty

RADIO-FREQUENCY ID chips (RFIDs) are exploding into public consciousness, with institutions ranging from casinos to the government of Singapore announcing plans to use them. RFIDs are tiny chips that can be programmed with identifying information and read by external scanners. Some privacy mavens see them as a step toward a world where everything we own becomes a potential bug that can track us everywhere and all the time.

Several state legislatures are picking up the signal. In late April, California's Senate passed a bill saying that stores and libraries may collect RFID information only on items customers buy or borrow from them—not from those they might look at or momentarily carry or from those already embedded in items the person brought in with them. An earlier version of the bill would have required institutions to disable the chips in items they sell before the merchandise leaves the store. State legislators in Massachusetts, Maryland, and Virginia also intend to consider chip-curbing legislation.

None of this would apply to the RFID use that hits the most Americans where they live: Wal-Mart's use of them on shipping containers and pallets—not (yet) on every individual item for sale, though some individually packaged computer accessories do have their own RFIDs, which can be thrown out with the packaging. Wal-Mart is already using them in its Dallas/Fort Worth shipping facility on items from cooperating suppliers. From Wal-Mart's perspective, this is just part of the state-of-the-art inventory control that has made it the largest, and often the cheapest, retailer in America. It intends to make its top 100 suppliers all use RFIDs by the beginning of next year.

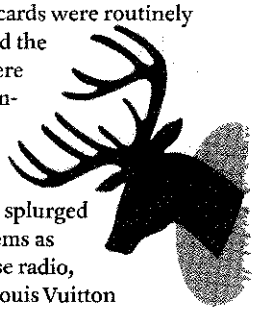
RFID hackers are already floating the idea of deliberately removing and trading the chips or randomly scattering them around the world. Such tactics would be aimed at preventing the use of RFIDs for any purpose outside the inventory control that is currently their main legitimate selling point.

Charge it to Uncle Sam!

Extra Credit

Julian Sanchez

NOTE TO embezzlers: An April report from the General Accounting Office (GAO) suggests that if you want to get away with ripping off your employer, you should consider a job in government. An audit of charge cards issued to federal employees found the cards were routinely abused, and the abusers were seldom punished.



Government employees splurged on such items as a $500 Bose radio, designer Louis Vuitton folios, Coach briefcases, $200 Lego robots, cigars, Oakley

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Balance Sheet

Jeff A. Taylor

iPod Person

It took buying an iPod to do it, but Rep. John Doolittle (R-Calif.) says he now understands that consumers really do have a stake in digital copyright issues. Congress weighs tweaking copyright laws to make it clear that fair use is not theft.

Cell Keeping

FCC Chairman Michael Powell is one of 2.8 million cell phone customers who have switched providers since November and kept their old phone numbers. Number switching had been a big disincentive to move to cheaper cell plans.

Nuclear Planet Power

The originator of the Gaia mythos, James Lovelock, declares that humanity's dependence on fossil fuels can be broken only by nuclear energy. For this, greens blast him.

Radio Traffic

City officials in Munich are looking at using radio frequency ID tags to help control and monitor traffic. The tags may help the city come up with a congestion pricing scheme for roadways or smart toll roads.

Baby Bell Bundle

Local Bell provider Verizon now permits consumers in about a dozen states to ditch their old dial-up phone service and still have a high-speed DSL line from Verizon. Such unbundling is the holy grail of telecom deregulation.

Route Around

An easily programmable $70 network router that runs Linux could one day be at the heart of grassroots, wireless Net providers. Adding one high-speed Net connection to a series of the routers results in more networking power than could be had for thousands just a few years ago.

Universal Disservice

The Wyoming Public Service Commission decides to do away with some subsidies that kept phone service artificially expensive in the state.

Special Spoilsmanship

The Bush administration presides over an explosion of covert "special access projects" designed to wage the war on terror with little oversight. A mere determination that "extremely sensitive activities" would help advance foreign policy objectives is all that is needed to create such a black project.

Can-Spam Opera

The authors of last year's federal CAN-SPAM Act notice that spam has not, in fact, been canned. Their solution? More law.

Discount Discounting

Medicare drug-discount card programs get off to a rocky start, with senior citizens often unable to find reliable info on what non-discounted drug prices might be.

Liquor Up

The Seattle City Council votes to make it impossible to buy less than a six-pack of beer in certain areas of the city. The problem is too many drunks—who'll now have to drink even more.

Napster Better

Italy updates its Fascist-era copyright laws to outlaw using Kazaa or other P2P services to distribute copyrighted works. Doing so is now legally the same as burning and pirating physical media and may result in prison.

All Thumbs

The FBI relies on a poorly processed digital copy of a fingerprint to arrest Oregon lawyer Brandon Mayfield in connection with the Madrid terror bombings. The bungle reflects the bureau's continuing misfires with investigative technology.

Day Drinking

In New Jersey, parents of kids who went on a three-day Oxford Central School field trip want six teachers punished for having a drink during the trip. The infraction occurred while students were under the watch of a security guard brought along on the trip.

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Data

Segregation Forever?

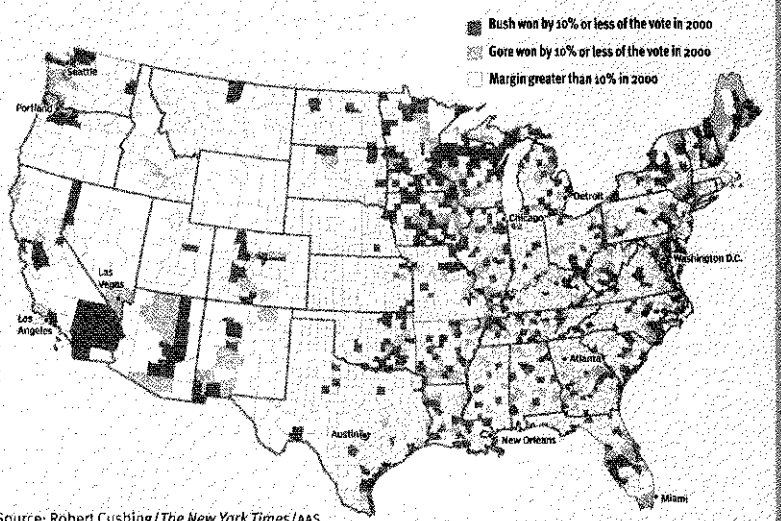
Julian Sanchez

When *Brown v. Board of Education* turned 50 this year, the Brookings Institution offered some qualified but heartening news about the state of racial integration in America: While a majority of neighborhoods (55 percent) in the 10 largest metropolitan areas were racially homogenous in 1990, just 10 years later a majority (52 percent) were racially mixed. But when it comes to political ideology, segregation is getting stronger.

In April, *Austin American-Statesman* reporter Bill Bishop penned a series on what he called the "great divide": Americans' growing tendency to live and work with others who share their ideology. In 1976 only 26.8 percent of voters lived in "landslide counties," where one contender captured 60 percent or more of the votes for a major party candidate. By 2000 the figure was 45.3 percent of voters. And while in 2000 Bush and Gore split the votes for major party candidates almost exactly 50-50, in only 772 of over 3,100 counties was the difference between them less than 10 percentage points.

As political theorist Cass Sunstein notes in *Why Societies Need Dissent* (Harvard), social scientists have firmly established that group opinions are subject to a feedback effect: When like-minded people interact, their views become more extreme. That means our political conversation is likely to continue as a *Crossfire*-style shouting match.

Landslide and Non-Landslide Counties in the Continental U.S.



Source: Robert Cushing/*The New York Times*/AAS

sunglasses, and a mounted deer head to "educate airmen about [the] local deer population." At the time of the report, none of the employees who bought those items had been disciplined.

The amount spent with such credit cards has grown from about $1 billion in fiscal year 1994 to over $16 billion in fiscal year 2003. But federal agencies have failed to control the number of cards issued, train cardholders how to use them properly, or monitor or audit purchases.

GAO auditors also found that the agencies had made little effort to seek discounts from frequently used vendors. All told, the report concludes, better oversight could save the government hundreds of millions of dollars.

Fighting obesity with pork

Fat of the Land

Michael De Alessi

THE GROWING national obsession with obesity has been a gold mine for everyone from fad diet hucksters to documentarians. Eager to join in, Congress has determined that the answer to obesity is...more federal spending in every congressional district.

Two congressmen from opposite ends of the political spectrum, Reps. Don Young (R-Alaska) and George Miller (D-Calif.), claim that spending more than $3 billion annually on environmental programs will help cure obesity. The bill they introduced in April, the Get Outdoors Act, permanently dedicates money from offshore oil and gas revenues to everything from local parks to federal wilderness areas. The theory is that these projects will finally give the heavyset crowd a chance to get a slimming workout.

The bill adds more federal land to an already bloated and mismanaged federal estate. A recent joint report from the Pacific Research Institute and the American Enterprise Institute found mostly positive trends in environmental quality, with the notable exception that "although dollars spent on public lands have gone up and land set aside for recreation or conservation has increased, the quality of the lands has, by most significant measures, deteriorated."

Banning same-sex contracts

Not for Lovers

Julian Sanchez

AS GAY COUPLES in Massachusetts celebrate their newfound right to marry, Virginia couples find themselves stripped even of the right to create marriage-like private contracts. The state's Affirmation of Marriage Act, which takes effect in July, not only forbids the state from

recognizing same-sex marriages or civil unions performed elsewhere but voids any private "partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage."

Constitutional scholars have said the law appears to violate the 14th Amendment's Equal Protection Clause, as well as the clause of Article I, Section 10 that

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prohibits states from passing laws "impairing the obligation of contracts." Gay rights groups, such as Equality Virginia, have suggested that the law could complicate property bequests and interfere with the ability of gay Virginians to designate partners to make medical decisions for them. Virginia Delegate David Albo (R-Springfield), one of the bill's sponsors, denies this is the case, saying the law voids only contracts that purport to form marriages.

But Albo himself seems unclear on what that means. Would a contract that creates the same legal relationships as a marriage without ever using the word *marriage* be permitted? No, says Albo. What about more-limited contracts providing only some of the rights associated with marriage? "I guess we don't know that yet," says Albo. "That's what the courts are for; they'll figure that out." Apparently, activist judges are a problem only when they're *granting* rights to gay people.

Who's Right?

Julian Sanchez

Adrian Wooldridge

America's postwar political history is arguably best seen as the story of the right's rise to power. Mainstream press coverage of the conservative movement often reads like the account of an anthropologist encountering some inscrutable tribe. So it's refreshing to read the comprehensive and surprisingly neutral look at the American right presented in *The Right Nation* (Penguin Press) by two writers for *The Economist*, Adrian Wooldridge and John Micklethwait. Assistant Editor Julian Sanchez spoke with Wooldridge in May.

Q: Why do you suggest that the 2004 election could be the Democrats' "last chance"?

A: One never wants to say *never*, but the Democratic Party is clearly a shadow of its former self. Democrats used to outnumber Republicans by 2-to-1. Now they're about evenly balanced, which is one reason Bush is able to be a more partisan figure. This *should* be a golden opportunity for Democrats. If they lose against a very partisan president dealing with a recession and a considerable problem in Iraq, who arouses enormous fury on the left, they will be in very serious trouble indeed.

Q: You note that the right-wing "noise machine," as David Brock calls it, was initially modeled on the left's organization. How did liberals fall behind?

A: There's a good story [Heritage Foundation founder] Paul Weyrich tells where he goes to a meeting at Brookings and someone reads a paper demanding more government. Someone says, "Oh, I'll write about this in the *Post*," and a Hill staffer says, "I'll talk to my congressman about this." There was a kind of perfect harmony across these different levels. To the extent that exists now, it's on the right.

Partly it's because on some big subjects, they've been proved broadly correct: Welfare reform was hugely demonized, but it seems to have worked. Partly it's flair: If you pick up *The Nation* and set it next to *The Weekly Standard*, it's just clear that the *Standard* is a better-looking, more interesting magazine. There's also a huge amount of brainpower on the left that gets absorbed by academia. Universities are such inhospitable territory for conservatives that they're *forced* into the policy making process, into think tanks, into media.

Q: Why is the U.S. so different from, and so much more conservative than, Europe?

A: The U.S. was the first country founded as a commercial republic. So American conservatism was purely bourgeois, whereas in Europe it got tangled in the defense of feudalism and aristocracy, baggage American conservatives don't have.

Owning the heavens

Space Oddities

Tim Cavanaugh

WHEN YOU FIRST fell in love, you had the International Star Registry name a star after your lover. But now that the romance has gone south, what's an equally dramatic way to get rid of the clothes, gifts, and jewelry that remind you of your hated ex? If a Nevada-based company gets its way, you'll be able to send the whole lot of it to the moon.

Orbital Development of Carson City is auctioning on eBay a chance to participate in its MoonCrash Project. The winner will get an opportunity to crash 22 pounds of personal cargo on the lunar surface when the company sends its spacecraft to the moon (an estimated 18 months from now). Bids start at $6 million.

This is not the only space project headed up by Orbital Development President Gregory Nemitz. In 2000 Nemitz staked a property claim to Asteroid 433, or Eros, a near-Earth body that, the company argues, is rich in silicon, iron, magnesium, and other elements. That claim, Nemitz says, gives him the right to charge the National Aeronautics and Space Administration the highly reasonable fee of $20 for one century's parking and storage fees: NASA's Near Shoemaker spacecraft has been parked on Eros since February 2001. "Are we sure," Orbital Development asks on its Web site, "that there is not sufficient law in the United States for its people to proclaim original property in space and gain official respect for a person's right to own it?"

Not surprisingly, the space agency takes a more narrow view of individual property rights and has rejected Nemitz's claim. The government contends that space property claims are covered (and mostly prevented) by the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space. The Orbital Development site proudly displays negative judgments on its case from (so far) NASA, the U.S. State Department, and the U.S. Attorney's Office in Reno.

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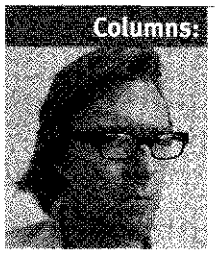

Watergate Blowback

The White House's ongoing battle against post-Nixon sunshine laws

IN NOVEMBER 1974, a reform-hungry Capitol Hill gave the newly sworn-in President Gerald Ford one of his first real challenges. Congress had passed a significant expansion of Ralph Nader's 1966 Freedom of Information Act (FOIA), aimed at prying open for public scrutiny the previously exempt areas of national security and law enforcement. When Ford was vice president to a commander-in-chief famous for his secrecy, paranoia, and abuse, he had supported the new sunshine amendments. But as chief executive, the interim president allowed himself to be talked into a veto by his intelligence directors and by his young chief and deputy chief of staff: Donald Rumsfeld and Dick Cheney.

"This was their first battle at Ford's White House," says Thomas Blanton, director of the National Security Archive (NSA), a nonprofit at George Washington University that has helped declassify more than 20,000 government documents. It was a battle the FOIA foes lost: Congress overrode Ford's veto.

Thirty years later, Rumsfeld and Cheney are again squaring off against the advocates of government transparency. At press time, the Bush White House had yet to release the photographs and videos of the vile prisoner abuse at Abu Ghraib; it's also defending its expansions of state secrecy in several cases before the Supreme Court. Its efforts are affecting not just Congress' and the press's ability to cross-examine the executive branch but citizens' ability to scrutinize how our tax money is being spent—and the government's ability to act without restraint.

"This administration just has a very fundamental opposition to the disclosure of records about government operation," says Tom Fitton, president of the watchdog group Judicial Watch. (Motto: "Because no one is above the law!") "I think the administration's general view is they'd like to see the end to all disclosure laws....Barring that, they're fighting within the confines of executive privilege and secrecy."

Judicial Watch, as you may recall from the 1990s, came into national prominence with a series of lawsuits to pry loose documents relating to "Filegate," "Chinagate," "E-Mailgate," and other Clinton scandals. "We're conservative—we're suspicious of big government," Fitton says. "I'm not aware of government secrecy as a conservative principle."

But as has become increasingly manifest during the course of George W. Bush's term, secrecy certainly has become a *governing* principle. Example: From fiscal year 2001 to fiscal year 2003, according to the federal Information Security Oversight Office, the number of documents classified by the government increased from 8 million to 14 million; the number of documents *de*classified has plummeted from 100 million to 43 million.

With many of the same themes and characters making headlines in 2004 as 30 years ago (down to the central muckraking role of investigative reporter Seymour Hersh, who helped expose both Abu Ghraib and the My Lai massacre, and who was targeted for possible federal prosecution in 1975 by none other than Dick Cheney), the temptation to make analogies to Richard Nixon has become irresistible—even among Supreme Court justices. (The Court weighed the Nixonian precedents when hearing arguments on whether executive privilege shielded Cheney's meetings with energy executives.) Nixon counsel turned Watergate whistleblower John Dean has a new bestseller out that cuts to the chase: It's called *Worse Than Watergate: The Secret Presidency of George W. Bush*.

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Does the analogy hold up? It's hard to imagine, given the depths of the Nixon administration's petty vindictiveness and depravity. (As Dean himself notes, Nixon's Joint Chiefs of Staff planted a spy in his National Security Council, which would be hard to picture today.)

But perhaps a more useful way of looking at the comparison is to note that many current officials, from the president to the attorney general to the Ford administration vets, have repeatedly expressed irritation at the limitations imposed upon them by post-Watergate reforms, particularly those dealing with the tension between scrutiny and secrecy.

"In 34 years," Cheney told Cokie Roberts in January 2002 on ABC's *This Week*, "I have repeatedly seen an erosion of the powers and the ability of the president of the United States to do his job....One of the things that I feel an obligation [to do], and I know the president does too, because we talked about it, is to pass on our offices in better shape than we found them to our successors. We are weaker today as an institution because of the unwise compromises that have been made over the last 30 to 35 years."

The September 11 massacre gave the administration all the political legitimacy it needed to begin dismantling those shackles. In short order:

• On October 12, 2001, Attorney General John Ashcroft issued a guidance memo to all federal agencies advising them to deny FOIA requests if there was any "sound legal basis" for doing so and assuring them that the Justice Department would provide any support necessary.

• On November 1, 2001, just as his father's records were about to be released to the public, Bush signed Executive Order 13,233, reinterpreting the 1978 Presidential Records Act to give the White House and former presidents unlimited discretion to veto the declassification of presidential papers. "The main thing it has done is just put a huge amount of delay in the system," Blanton says. "In 2001, before he wrote that Executive Order, the Reagan Library, for example, took about a year and a half, between 14 and 18 months, to respond to a request for documentation. Today, it's 48 months."

• On November 25, 2002, Bush signed the Homeland Security Act, which created a FOIA exemption for even nonclassified documents pertaining to what was vaguely defined as "critical infrastructure."

• On many occasions since, the White House has sought to extend executive privilege into uncharted territory.

The problem, Judicial Watch's Fitton and the NSA's Blanton agree, is that the administration's national security justifications are frequently bogus. "I'm not talking about the blueprints to a nuclear weapon, or our national defense and secrets related to that," says Fitton. "We're talking about using those types of national security arguments to just cover up corruption and things that are politically inconvenient."

Blanton says documents that administrations fight tooth and nail to suppress—such as the Pentagon Papers, or the infamous August 6, 2001, presidential daily briefing about Osama Bin Laden, or the 56-year-old Air Force accident reports whose classification formed the legal basis for withholding information on national security grounds—typically contain little or no truly sensitive information. "The banality of the thing is what strikes you," he says.

Watergate taught millions of Americans about the dangers of government operating without sunshine. But Bush administration officials, especially those who lived through the scandal, learned an altogether different lesson—that checks and balances can be distractions and handcuffs.

"Corruption thrives in secrecy," Fitton says. "And if a bureaucrat thinks that everything he does is never going to see the light of day, and a politician or a political appointee thinks the same, then you can bet that the temptation to do incorrect things will be greater.

"If the idea is that what they can do can be exposed by an intrepid reporter or an activist group, it *does* keep people in line. And we're not talking about the speeding violations that often pass for ethics enforcement here in Washington. We're talking about, for instance, lying to Congress about the costs of a huge entitlement program. We're talking about bribery for pardons by the president of the United States....These aren't technical violations of ethics rules; this is hammer-in-the-head stuff, and anyone who doesn't understand that this is wrong, and the secrecy surrounding it is wrong, frankly shouldn't be trusted with the public's trust." ▯

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Taking Science Seriously

Conservative dogma about sex roles ignores inconvenient realities.

THE FEMINIST DENIAL of biological differences between the sexes can be downright hilarious. Who could forget Gloria Steinem, interviewed by ABC's John Stossel in 1995, deriding research on sex differences in the human brain as "anti-American crazy thinking"? In some quarters it's still a dogma that all sex differences in social roles, behavior, and attitudes are the result of the "social construction of gender."

In the face of this "biodenial," as the scholars Daphne Patai and Noretta Koertge dub the phenomenon, conservatives are supposed to be the voice of common sense defending the basic realities of human nature. It's a necessary job: A rigid orthodoxy of androgyny is likely to have adverse consequences, both personal and political (such as aggressive, coercive efforts to eliminate disparities that might be rooted in inherent male-female differences). Unfortunately, the conservative critique careens to the opposite extreme, as if there were nothing between Gloria Steinem and June Cleaver.

A case in point is *Taking Sex Differences Seriously* (Encounter Books), a new book by Stephen E. Rhoads that bears blurbs from such conservative luminaries as Francis Fukuyama and Danielle Crittenden.

Rhoads, who teaches public policy at the University of Virginia, marshals scientific data in support of supposedly traditional wisdom about the sexes. Unfortunately, he mixes genuinely interesting information and analysis with dubious generalizations, slim or anecdotal evidence, and sometimes downright junk science. And his conclusions can be distilled to such hoary precepts—e.g., girls who are too smart or too ambitious will have trouble landing a husband—that one feels like making a beeline for the nearest chapter of the National Organization for Women. With friends like these, human nature needs no enemies.

There is indeed a growing amount of research pointing to innate psychological differences between men and women. But there are several caveats. For one thing, scientific knowledge in such areas as brain neurochemistry and the link between hormones and behavior is still in its relatively early stages; much remains unknown, inconclusive, or poorly understood. Brain organization and hormonal makeup, for instance, may be influenced by human activities and environment.

Perhaps more important, nearly all sex differences are characterized by vast overlap: Generally, a trait more typical of one sex will occur in the other sex 35 percent to 45 percent of the time. Of the two brain-difference studies most widely publicized in the 1990s, one found the "male" pattern of brain activity in 40 percent of women; the other found the "female" pattern in about a third of men.

Rhoads occasionally acknowledges both the shortcomings of the research and the variability within each sex. But once he moves past the disclaimers, *Taking Sex Differences Seriously* drowns in generalizations. Men are competitive, dominance-seeking, aggressive, and ambitious; women are nurturers and peacemakers with a "taste for harmonious, egalitarian connections." (As the very sensible feminist Elizabeth Fox-Genovese wrote some years ago, no one who has been snubbed by a high school girls' clique could ever make such a claim with a straight face.) Men want careers and sex; women want marriage and babies.

Rhoads rarely clarifies the extent of these gender gaps. By and large, he is content with such broad statements as, "When asked how

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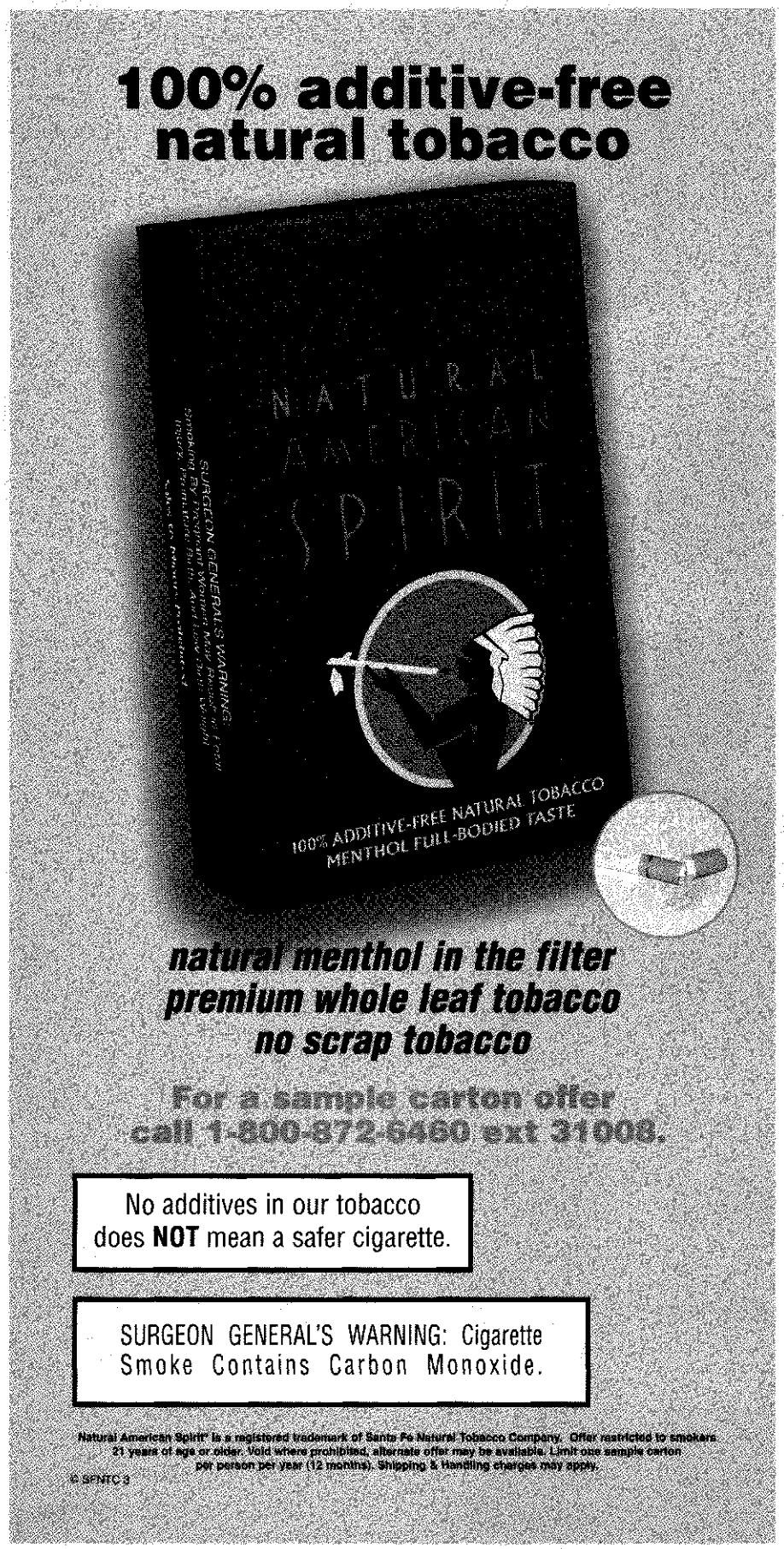
they would like to be described, men use words like *dominant, assertive, independent.* Women asked the same question say *loving, generous, sensitive.*" All men? All women? In studies measuring these attitudes, women's ratings of the importance of such traits as compassion and sensitivity to others' needs may be all of 10 percent higher than men's.

When Rhoads does cite figures, they aren't exactly overwhelming. For instance, about half of male college freshmen and 68 percent of their female peers say that "helping others in difficulty" is "a very important or essential life objective." (In reality, it should be noted, men are as likely as women to give to charity, and they spend only slightly less time on volunteer work despite their greater involvement in the paid work force.)

Elsewhere, Rhoads reveals that 81 percent of high school girls but "only 72 percent of boys" say having a good marriage is extremely important. He doesn't mention another poll in which 73 percent of teenage girls and 61 percent of boys said they could have happy lives even if they didn't marry.

Of course there are plenty of real, observable differences, *on average,* in the attitudes, preferences, and behavior of men and women—most notably in the areas of child rearing and sex. These differences probably are due to a mix of biological and cultural factors.

Few people outside the radical fringe of the feminist academy would disagree with Rhoads on these points. Furthermore, his policy prescriptions are mostly sound. The government, he writes, should not hold college athletic programs to an artificial stan-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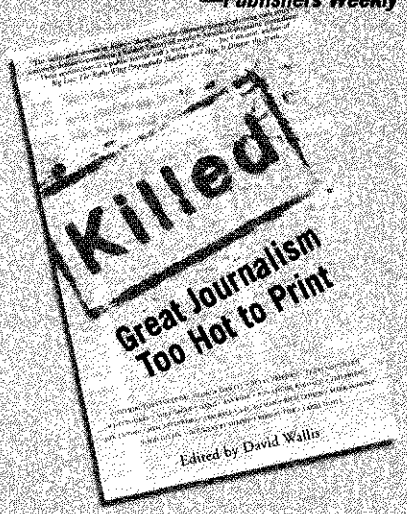

"The suffocated stories in *Killed* constitute a hidden history of modern American magazine journalism. Their resurrection is a public service and a work of art."
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NATION BOOKS

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dard of "parity" based on the assumption that men and women have identical levels of interest in sports. Maximizing parental choice—to raise children full-time, to place them in child care in an informal setting, or to use institutional day care—is better than a taxpayer-subsidized, one-size-fits-all model of universal day care.

Unfortunately, *Taking Sex Differences Seriously* is to some extent a diatribe against personal choices that don't fit the traditionalist mold. A woman who seeks career success and power outside the home, Rhoads tells his readers, "will have to be as agile as Spiderman if she is to be happily married as well."

Couples who believe either parent can stay at home with the children are cautioned that, while less maternal employment is beneficial for the children, less paternal employment is likely to have the opposite effect. (Here, Rhoads relies on studies that make no distinction between fathers who choose to stay home and those who are involuntarily unemployed or underemployed.) Rhoads almost gleefully recounts the story of an ambitious professional woman who developed such contempt for her homemaker husband that she refused to have sex with him and started having affairs with her colleagues.

Anecdote is heaped upon anecdote to show that working mothers are doomed to misery and that highly successful women are quitting their careers in droves to tend to the home fires. Some of Rhoads' examples don't tell the whole story. He mentions that in 1996 Democrat Blanche Lambert Lincoln of Arkansas "decided not to run for reelection to the House of Representatives when she found that she was carrying twins"—but he leaves out the somewhat inconvenient fact that two years later Lincoln ran for the U.S. Senate and won.

Rhoads trots out the usual suspects—Gloria Steinem, Jane Fonda, Simone de Beauvoir—to show that even feminist women are drawn to higher-status dominant men. For some reason, we never hear about Margaret Thatcher, a very powerful woman who seems to have had a very happy marriage to a non-alpha male.

To top it all off, Rhoads ends his book with a call to women: "Men like challenges. Women might ask them to step up and be real providers, leaving women more time and capacity to better fulfill the domestic role." They should also, he counsels, allow men to be "the ostensible head of households" as an incentive to marry, while wielding a subtler power through their feminine wiles.

Some feminists will probably say Rhoads' retro message is dangerous to women. More likely, these odd flights of nostalgia will make his book irrelevant. Americans do not, as the statistics cited by Rhoads show, embrace "androgyny." But rigid gender roles are growing steadily less popular, particularly among young people. It is now widely recognized that feminists were wrong to denigrate the traditionally feminine choices made by many women. It is just as wrong and just as myopic for conservatives to denigrate freely chosen nontraditional ways of life. ◻

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The Wrong Lesson

Teaching college reporters to be meek

When staffers at Baylor University's newspaper published an editorial earlier this year that supported same-sex marriage and likened discrimination against gays to religious intolerance, the president of the Baptist school in Waco, Texas, did not turn the other cheek. Instead, Robert B. Sloan issued a veiled threat to the paper's editors. "Espousing in a Baylor publication a view that is so out of touch with traditional Christian teachings," he seethed in the next edition of *The Baylor Lariat*, "comes dangerously close to violating University policy."

A board of faculty advisers promised that the *Lariat* would "avoid this error" in the future. Explaining that the editors would not be punished for their sins, a board member said, "It was a teachable moment." Teachable indeed. But what was the lesson?

Forget for the moment that Baylor is a private university not subject to First Amendment limitations and that the school owns the newspaper. At a crucial moment in their development, Baylor journalists-in-training learned to shut up, fall in line, and stop questioning authority. That's bad for liberty, whether or not it was an infringement of liberty in itself.

Judging by the consistently tame questioning of America's political leaders and the prevalence of "have a nice day" journalism that features countless stories on dogs with 12-inch tongues and cats that can use a toilet just like a human being, deference and inoffensiveness are lessons that have been taken to heart by many in the mainstream media.

The Baylor case is no isolated incident. Many school administrators, faced with student editors who boldly test the boundaries, react like the commissars at the old Soviet *Pravda*. In recent months, Barton County Community College in Kansas fired its paper's media adviser after she resisted an order not to run a letter criticizing the school's basketball coach. La Roche College, a Catholic school in Pittsburgh, confiscated 900 copies of the *La Roche Courier* in which a columnist dared to suggest that "condoms and other forms of contraception could eliminate unwanted babies out of wedlock." And Long Island University in New York changed the locks on its student newspaper offices and suspended its editor for rigorous reporting that revealed the failing grades of a former student government president who had mysteriously resigned.

Deplorable in itself, a repressive atmosphere on campus can breed a pernicious self-censorship. Chris Carroll, director of student media at Vanderbilt University and a former president of College Media Advisers, an organization that monitors collegiate censorship, worries that young journalists are increasingly "submissive." He cites a troubling case at his own university: "I had a freshman who was on something that I think could have been a story, [concerning] our current chancellor, with some of his affiliations with corporate boards outside the school. He kept digging and learning more and more and more, and he talked to the chancellor, who scared the living shit out of him....He said, 'You know I'm here on financial aid; these people can sue me, ruin me, ruin my family,' and he quit the paper. He's gone."

If colleges discourage young reporters from investigating powerful interests while in school, how can society expect them to probe political corruption once they graduate? When students cower rather than proclaim their opinions on campus, how can we expect them to stand up for what they believe off campus?

There's a simple, market-driven tactic to convince schools not to strangle free speech. Parents who value the First Amendment should steer away from colleges that censor their students. Hitting offending colleges in the endowment would provide dictatorial administrators with a valuable lesson, one they would not soon forget. ■

Parents who value the First Amendment should steer away from colleges that censor their students.

David Wallis (featurewall@featurewall.com) runs the online syndication service Featurewall and is editor of Killed: Great Journalism Too Hot to Print (Nation Books).

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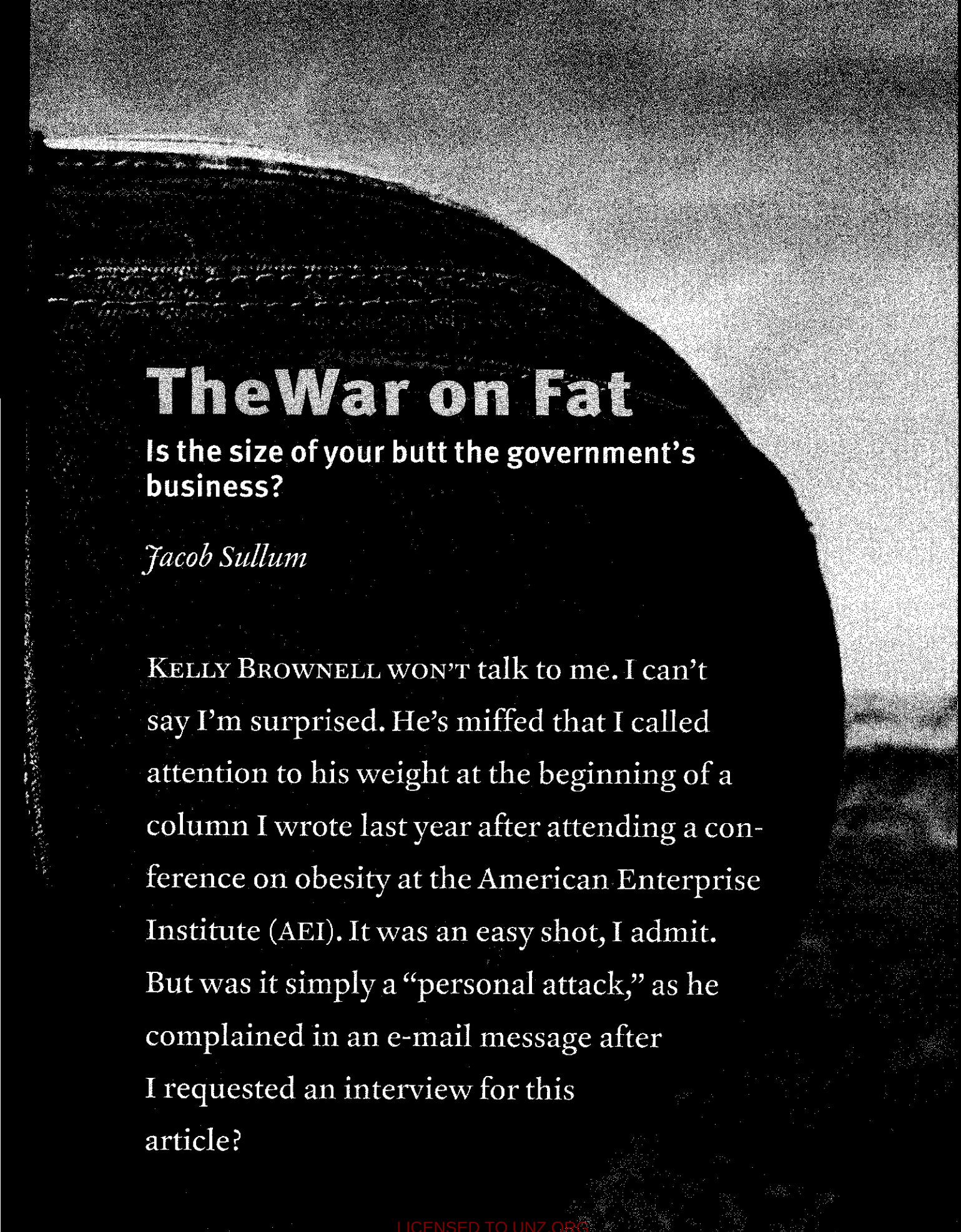

The War on Fat

Is the size of your butt the government's business?

Jacob Sullum

KELLY BROWNELL WON'T talk to me. I can't say I'm surprised. He's miffed that I called attention to his weight at the beginning of a column I wrote last year after attending a conference on obesity at the American Enterprise Institute (AEI). It was an easy shot, I admit. But was it simply a "personal attack," as he complained in an e-mail message after I requested an interview for this article?

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Jurors are not likely to blame fast foo they are led to believe that the restaurant that enthrall customers an

Surely it would be legitimate to point out that an anti-tobacco activist was a chain smoker, that an opponent of legalized gambling liked to play the slots, or that an anti-porn crusader was fond of dirty movies. So when a leader of the burgeoning war on fat, a Twinkie tax advocate who never tires of comparing Ronald McDonald to Joe Camel, turns up sporting an extra chin and an ample gut, noting those facts should not be considered out of bounds. And if Brownell does not like it when someone suggests he could stand to lose a few pounds, perhaps he should think twice about enlisting the government in his campaign to slim down millions of his fellow Americans. He would be on much firmer ground in objecting when people note that he's fat if he were consistent in treating weight as a private matter.

Then again, Brownell's portliness—which he attributes to inactivity and overeating while he was working on his recent book about the "human crisis" created by inactivity and overeating—could be viewed as Exhibit A in his case against the "toxic food environment." Here we have a professor of psychology at Yale, an expert on weight control frequently consulted by the press and invited to appear on television, who is reduced to using an old photo of his formerly thin self on the jacket of *Food Fight: The Inside Story of the Food Industry, America's Obesity Crisis, and What We Can Do About It* (McGraw-Hill). Worse, Brownell directs the Yale Center for Eating and Weight Disorders, which offers counseling to people desperate to lose weight. If anyone has an incentive to stay slim, you might think, he does.

In a sense, then, Brownell's paunch reinforces his argument that Americans have little real choice about what we eat, that we are prisoners of an environment in which food is too cheap, too tasty, and too convenient. Combine these ever-present temptations with meager opportunities for exercise, and you get the "epidemic" that Brownell and his allies decry: The federal government's survey data indicate that two-thirds of American adults are overweight, up from a quarter in the late 1970s. The overweight category includes the obese, who represented more than 20 percent of adults in 2001, compared to 12 percent a decade earlier. (These categories are defined by body mass index, which is weight in kilograms divided by the square of height in meters. If your BMI is 25 or more you're "overweight," and once your BMI hits 30 you're "obese.") Medical conditions associated with obesity include arthritis, gout, sleep apnea, diabetes, high blood pressure, heart disease, stroke, and various cancers. A recent analysis by researchers at the U.S. Centers for Disease Control and Prevention (CDC) attributed 400,000 deaths a year in this country to "poor diet and physical inactivity." When the study was published in March, Secretary of Health and Human Services Tommy Thompson emphasized that "poor eating habits and inactivity are on the verge of surpassing tobacco use as the leading cause of preventable death in America." Last year Surgeon General Richard Carmona declared: "I refuse to accept the spread of obesity...I am committed to advancing the prevention agenda...It will take all of us working together to find the solution to this growing problem."

One can argue about the magnitude of the problem that worries Thompson and Carmona. The 400,000 estimate—which covers all diseases related to diet and inactivity, not just those stemming from excess weight per se—is based on risk increases inferred from associations found in epidemiological studies. As a 1998 editorial in *The New England Journal of Medicine* noted regarding an earlier version of this calculation, "that figure is by no means well established. Not only is it derived from weak or incomplete data, but it is also called into question by the methodologic difficulties of determining which of many factors contribute to premature death." In any case, such death tolls obscure the risks faced by someone who is trying to decide whether the benefits of losing weight are worth the costs in terms of effort and forgone pleasure.

Two studies published in January 2003 give a clearer sense of the dangers associated with excess weight. One, reported in *The Journal of the American Medical Association*, found that white men in their 20s with BMIs of 45 or more (e.g., a man who is five feet, nine inches tall and weighs at

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chains for the sin of gluttony unless pump their food full of magical chemicals keep them coming back for more.

least 305 pounds) live, on average, about 13 fewer years than men who are not overweight; the comparable figure for white women was eight years. By contrast, the merely overweight (with BMIs between 25 and 30) "lost" only a year or so. The other study, reported in the *Annals of Internal Medicine*, looked at life expectancy for 40-year-olds enrolled in the Framingham Heart Study. Among nonsmokers, it found, overweight men and women could expect to live about three fewer years than subjects who were not overweight. For obese 40-year-olds, the "years lost" rose to six for men and seven for women—similar to the loss of life expectancy associated with cigarette smoking.

The health effects of extra pounds can be difficult to isolate, especially since overweight people tend to be sedentary and to eat poor diets. Although thin people who exercise seem to be the healthiest group, overweight people who are physically active are healthier than thin people who are not. Without plunging into the "fit vs. fat" debate, suffice it to say that what you eat and how much you exercise clearly have implications for your health and longevity. Even if they don't account for as many fatal illnesses as the CDC's estimate suggests, they do make a substantial contribution to disability and mortality.

The more important question is why any of this is the government's business. Granted that obesity is a health issue, why is it a *public* health issue? The answer from Brownell and like-minded activists is that the government must rescue consumers—especially children—from the environmental forces that make them fat, thereby rescuing taxpayers from the burden of obesity-related medical expenses. They propose to accomplish this mission through a combination of taxes, subsidies, censorship, and regulation. In his book *Food Fight* (co-authored by Katherine Battle Horgen), Brownell says "profound change is necessary." Among other things, the government must "change the basic economics of food," redesign cities so that "times, places, and incentives for people to be physically active [are] engineered into daily life," "prohibit marketing of products to children," "prohibit snack foods and soft drinks from schools," and "prohibit the operation of businesses selling food within a certain distance of schools." If legislatures fail to go along with this agenda, "litigation may be necessary."

The war on fat is the latest manifestation of a collectivist philosophy that says the government has a duty to protect "public health" by discouraging behavior that might lead to disease or injury. It also reflects an anti-capitalist perspective that views people as helpless automatons manipulated into consuming whatever big corporations choose to produce. The anti-fat crusaders want to manipulate us too, but for our own good. They seek to reshape us by reshaping the world.

Dining Fine

Before you dismiss this agenda as the pie-in-the-sky wish list of wannabe social engineers, consider the trajectory of the Twinkie tax, which has gone from reductio ad absurdum to serious policy proposal in just a few years. In a June 1994 newspaper ad that criticized proposals to sharply raise tobacco taxes, R.J. Reynolds said: "Today it's cigarettes. Will high-fat foods be next?" Anti-smoking activists traditionally responded to this sort of slippery-slope argument by insisting that cigarettes were unique, "the only legal product that when used as intended causes death." To suggest that anti-smoking measures might pave the way for attacks on cheeseburgers and ice cream, they said, was just silly.

Yet six months after R.J. Reynolds tried to scare people with the outlandish prospect of a tax on fatty foods, Brownell endorsed the idea on the op-ed page of *The New York Times*, citing the precedent set by cigarette taxes. He said "taxing foods with little nutritional value" would deter consumption and help raise money for bike paths, running tracks, and nutrition education. "Fatty foods would be judged on their nutritive value per calorie or gram of fat," he explained. "The least healthy would be given the highest tax rate."

Brownell was serious, and pretty soon people started to take him seriously. At the end of 1997, *U.S. News & World Report* picked what it dubbed the "Twinkie tax" as one of "16 Silver Bullets: Smart Ideas to Fix the World." The follow-

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The argument for a government war or health insurance proves too much. The same take an interest in what kind of sex you

ing year, *The New Republic*'s Hanna Rosin chided "alarmist" commentators who had criticized the notion of using taxes to encourage better eating habits. Aside from Brownell and a couple of other academics, she said, very few people were voicing support for the idea. One of them, it turned out, was Hanna Rosin. "It's too bad Brownell isn't more popular," she wrote.

By last year, TV commentator Morton Kondracke, the very embodiment of inside-the-Beltway centrism, was opining in his syndicated column that "a hefty tax based on the fat and sugar content of foods would discourage consumption, provide revenue for education programs...and recover some of the billions that obesity-related illnesses cost the government in Medicare and Medicaid outlays." He presented the idea as a sensible, moderate alternative to "allowing trial lawyers to get rich suing McDonald's, Wendy's, and Burger King."

Such endorsements may not constitute a stampede, but *U.S. News, The New Republic,* and Morton Kondracke are good barometers of what's considered part of mainstream political debate. It seems the Twinkie tax qualifies.

So far legislative proposals to implement the idea, including bills in New York and California, have not gone anywhere. But in his book Brownell plausibly argues that modest junk food taxes aimed more at revenue raising than behavior modification have a good chance of passing. Although Brownell wants the money earmarked for anti-obesity efforts, it's not hard to imagine a legislature welcoming this new source of revenue as a way to avoid spending cuts. "Small taxes with earmarked money...may be the way to begin," Brownell and co-author Horgen write. "This would introduce the concept to the public, and if the earmark programs were successful, higher taxes might be acceptable at a later time."

Ultimately, Brownell wants to combine the taxes with subsidies for fruits, vegetables, and other foods deemed healthy, achieving centrally planned prices designed to minimize weight, maximize nutritional value, and "thereby improve public health." Given that Brownell is undaunted by the complexity of this task, perhaps it's not surprising that he does not bother to make a persuasive case that price is an important barrier to healthier eating. Potato chips are cheap, it's true, but so are most fruits and vegetables. At my local Giant supermarket, green beans, apples, kale, and fresh carrots cost $1.99, $1.49, 99 cents, and 89 cents a pound, respectively. A 20-ounce bag of Utz potato chips goes for $4.19, or $3.35 a pound.

Anti-fat activists do not let such mundane facts obstruct their vision of food prices perfectly geared toward health improvement. In her 2002 book *Food Politics,* New York University nutritionist Marion Nestle, who agrees with Brownell that the government should be doing much more to fight obesity, notes that "it is not difficult to select a health-promoting diet...at quite low cost." Yet 24 pages later, she suggests that "the prices of fruits and vegetables...could be subsidized to compensate in part for the low economic added value of these foods—just as is already done through price supports for dairy foods and sugar." Price supports, of course, make prices *higher,* not lower, but you get the idea.

Force-Fed Fatties

If economics is not the forte of Brownell and his allies, neither is constitutional law. To combat ads for fast food and sugary treats, Brownell and Horgen want to revive the "fairness doctrine," under which the Federal Communications Commission required broadcasters to provide time for opposing views when they covered controversial topics. The FCC abandoned the policy in 1987 after concluding that it had a chilling effect on speech, encouraging TV and radio stations to steer clear of controversy. Brownell and Horgen not only ignore that concern but propose "requiring advertisements for healthy foods or spots discouraging consumption of unhealthy foods" in *every* medium, even though the original fairness doctrine hinged on the special status of broadcasters as custodians of "the public airwaves." The U.S. Supreme Court has explicitly rejected a broader "right of reply" as inconsistent with the First Amendment.

Nestle likewise suggests an "equal time" requirement for "eat less, move more" messages, but she and Brownell both would prefer a complete ban on advertising aimed at

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obesity based on taxpayer-funded ogic suggests the government should have and whether you floss regularly.

children, for any product (not just food) in any medium. While Brownell does not even acknowledge that such a ban would raise First Amendment issues, Nestle tells me, "It's very hard for me to believe that the Founding Fathers intended the First Amendment to apply to commercial speech." (By contrast, presumably, they *did* intend the Constitution to authorize a federal war on obesity.)

Aside from a narrow view of the First Amendment—which, after all, says nothing about a distinction between "commercial" and "noncommercial" speech—this enthusiasm for banning ads reflects the complaint that companies foist their products on an unwilling yet malleable populace. By Nestle's account, "The overly abundant food supply, combined with a society so affluent that most people can afford to buy more food than they need, sets the stage for competition. The food industry must compete fiercely for every dollar spent on food, and food companies spend extraordinary resources to develop and market products that will sell, regardless of their effect on nutritional status or waistlines. To satisfy stockholders, food companies must convince people to *eat more* of their products or to eat their products instead of those of competitors."

Nestle thus treats "the overly abundant food supply" as a pre-existing fact, arbitrarily determined by "the food industry" without regard to demand. "Whether consumer demands drive food sales or the industry creates such demands is a matter of debate," she writes, "but much industry effort goes into trying to figure out what the public 'wants' and how to meet its 'needs.'" The scare quotes suggest which side of this debate Nestle comes down on. If you view competition as bad for consumers, you can't have a very sanguine view of their ability to resist corporate come-ons. "Food industry practices distort what Americans are told about nutrition...and compromise food choices," Nestle argues. "Food companies will make and market any product that sells, regardless of its nutritional value or its effect on health. In this regard, food companies hardly differ from cigarette companies."

And not just in this regard. "Like cigarette companies," Nestle writes, "food companies...expand sales by marketing directly to children." That's what Brownell was getting at, of course, when he started comparing Ronald McDonald to Joe Camel. The child protection argument is crucial for the anti-fat movement because, as Nestle notes, "most of us believe that we choose foods for reasons of personal taste, convenience, and cost; we deny that we can be manipulated by advertising or other marketing practices." But even if you're naive enough to believe that you know your own desires, you may still think that children, less savvy about advertising than adults, are vulnerable to manipulative marketing—"easy prey for the food companies," as Brownell and Horgen put it. After all, "children find advertisements fantastically engaging."

However mesmerizing the commercials for Lucky Charms or Skittles might be, parents usually have some say as to whether the product will be purchased. "It is easy to blame parents," say Brownell and Horgen. No, it's not. It is easy to blame big corporations. Blaming parents means expecting them to take an active role in monitoring their kids' diets. As Nestle suggests, that is not a popular message. "Most parents of my acquaintance tell me they are constantly arguing with their children over food choices," she writes. "Parents vary in the ways they deal with children's demands for advertised foods, but many prefer to reserve family arguments about setting limits for dealing with aspects of behavior that they consider more important." Please. If parents don't have the wherewithal to say no when their kids ask for something they saw on TV, their problems go far beyond the risk of chubby offspring.

This is not to deny that the rise in obesity among minors, which has been accompanied by the increasingly early occurrence of what used to be called "adult onset" (Type 2) diabetes, is a legitimate cause for concern. The government's data indicate that 15 percent of Americans between the ages of 6 and 19 were overweight in 2000, about three times the rate in the early 1970s. It's certainly appropriate for parents, educators, nutritionists, and physicians to talk about how to improve nutrition education, increase physical activity during the school day, and raise the quality of food available in schools. But anti-fat activists are using concern about obese

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kids to justify policies that treat adults like children—as any attempt to eliminate ads that reach minors inevitably would.

Giant Killers

Brownell understands that since "the responsibility to protect children is deeply ingrained in American morality," it makes sense to depict the anti-fat campaign as a crusade to save the children. "Children are targeted in a relentless way by the food companies," he and Horgen write. "Children need us; the nation can afford to fail them no longer. They need protection from the giant that looms over them."

Presumably they're not talking about the Jolly Green Giant, since he hawks the vegetables that Brownell wants to subsidize. But the food giant certainly *seems* friendly, offering consumers a cornucopia of food choices at low prices. You could easily be fooled by the giant's benign appearance if, like most Americans, you've been tricked into believing that choice and value are good.

Anti-fat activists know better. For Nestle, the huge number of food products on the market is prima facie evidence of the industry's callous disregard for "the public health." Brownell emphasizes that variety encourages overindulgence.

Likewise, food sellers who give customers extra value for their money clearly are up to no good. "Americans are constantly induced to spend a little more money to get a lot more food," lamented Margo Wootan of the Center for Science in the Public Interest (CSPI) in a press release that accompanied the 2002 exposé "From Wallet to Waistline: The Hidden Costs of Supersizing." She added: "Getting more for your money is ingrained in the American psyche. But bigger is rarely better when it comes to food."

Among the horrors highlighted by the report: "Upgrading from a 3-ounce Minibon to a Classic Cinnabon costs only 24% more, yet delivers 123% more calories....Switching from 7-Eleven's Gulp to a Double Gulp costs 42% more, but provides 300% more calories....It costs 8 cents *more* to purchase a McDonald's Quarter Pounder with Cheese, small French fries, and small Coke (890 calories) than it costs to buy the

American Slender

When did freedom become just another word for 10 pounds left to lose?

Nick Gillespie

"We're just too darn fat, ladies and gentleman, and we're going to do something about it," proclaimed the formerly plus-sized, multiple-chinned Secretary of Health and Human Services Tommy Thompson last spring while announcing a new government ad campaign designed to help citizens shape up. (Thompson has shed an undisclosed number of pounds while on a public diet.)

"We've got so many people who are fat," declared the slender Michigan governor—and former beauty queen—Jennifer Granholm at the National Governors Association meeting in March. "And that is really contributing significantly to our health care costs."

Along with more than a dozen of her peers, Granholm strapped on a pedometer to see who walked the farthest during a 16-week period. Other gubernatorial fat fighters include South Carolina Gov. Mark Sanford (undertaking a 300-mile bike trek), Georgia Gov. Sonny Perdue (publicly forswearing Snickers), and Texas Gov. Rick Perry (sponsoring a 10-kilometer walk/fun run).

Thus the United States turns from nation building abroad to nation bodybuilding at home. In a world beset by terrorism, poverty, and malnutrition, who could have imagined that being fat would become the subject not simply of the derision and scorn it has long inspired but a political topic every bit as heartburn-inducing as a Tabasco-flavored Slim Jim?

If history is any guide, it's safe to assume that a hot topic of political discussion will quickly transform into a hot topic of legislation, ranging from Twinkie taxes to mandatory high school exit exams administered by the President's Council on Physical Fitness (which one assumes is now part of the Department of Homeland Security). Can the federal Leave No Chubby Child Behind Act be far away in a country in which 15 percent of kids are officially considered "overweight"? The corresponding figure for adults is about 65 percent, which simply pours more fat on this particular political fire.

If being overweight contributes

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Quarter Pounder with Cheese *large* Extra Value Meal, which comes with a large fries and large Coke (1,380 calories)....A 23% increase in price [for movie theater popcorn] provides 125% more calories."

Just to be clear: CSPI is saying that bargains are bad, that there is something sinister about volume discounts and package deals. McDonald's is practically giving away tasty meals to eager customers, and we should all be deeply troubled by that fact. Brownell and Horgen, who cite "From Wallet to Waistline" in their book, argue that food bargains amount to "consumer exploitation" because "people have biological vulnerabilities that promote overeating when large portions are available, a strong desire for value, and the capacity to be persuaded by advertising."

Junk Food Junkies

With sneaky corporations taking advantage of consumers in this way, litigation was inevitable. The most conspicuous booster of fast food lawsuits is George Washington University law professor John Banzhaf, a longtime proponent of suing our way to a better society who treats the epithet "legal terrorist" as a compliment. In the 1960s this self-identified "Nader of the cigarette industry" used the fairness doctrine (which Brownell wants to revive as a weapon against Big Food) to demand that broadcasters who carried cigarette commercials also provide time for anti-smoking spots, a legal strategy that ultimately led to the demise of tobacco ads on TV and radio. Like other anti-smoking activists, Banzhaf initially resisted the analogy between tobacco and food, telling *The Washington Times* in 1997: "I've heard it since 1969, when they said if we applied the fairness doctrine to cigarette commercials, there'd be anti-automobile ads and anti-McDonald's ads. But it never happened."

Five years later, Banzhaf was serving as an "informal adviser" to New York City attorney Samuel Hirsch, who filed the first two lawsuits in which obese people blamed fast food restaurants for making them fat. Hirsch's first client was a 56-year-old maintenance worker named Caesar Barber, who was five feet, 10 inches tall and weighed 272 pounds (giving him a BMI of 39). The main problem with

"significantly to our health care costs," the best way to reduce our dangerous dependency on imported stretch fabrics is to make individuals internalize those costs the same way they scarf down the Big Macs and (formerly) supersized fries. That means reducing the publicly funded elements of health care. An added benefit of that would be to deny politicians—and your taxpaying neighbors—any right to shape your personal lifestyle.

Indeed, there is something creepy and deranged when politicians start calculating versions of a Body Mass Grave Index and flap their gums about the dire need to create a Body Politic by Jake. The current political fixation on fat is as distinctly un-American as Alger Hiss' side job as a Kremlin copyboy. The United States is the most tolerant nation on the planet—as long as you look good in a tight pair of Levi's. So when exactly did freedom become just another word for 10 pounds left to lose?

My immigrant grandparents didn't come to this country so that their children, and their children's children, wouldn't have enough to eat. In fact, they left the Old World, with its regular famines and emaciated lower classes, for almost precisely the opposite reason: They dreamed of living in a country where even the masses struggled to squeeze into relaxed fit jeans and size 18 housecoats.

Even as they went to their graves still possessing the lean and hungry peasant bodies they arrived with at Ellis Island, my grandparents must have looked upon the ever larger and fatter bodies of their descendants as the very incarnation of the American Dream.

By injecting politics into diet like so much Bavarian Kreme filling into a Dunkin' Donut, we may well accomplish little more than hardening the arteries of the greatest political experiment of modern times. A skinnier America may well be a healthier America. It will certainly be a more attractive America. But if it comes into existence through politics rather than individual initiative, choice, and restraint, it will diminish the land of the free and the home of the brave in ways that no bathroom scale could ever fully measure.

Nick Gillespie (gillespie@reason.com) is **reason***'s editor-in-chief.*

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John Banzhaf told the *Obesity Policy Report*, "order [people] to exercise." Why not? Which is suing McDonald's, or mandatory

Barber, who continued a diet consisting largely of burgers and fries despite a heart attack and warnings from his doctor, was that his stupidity was literally unbelievable. "They said, '100 percent beef.' I thought that meant it was good for you," he claimed after filing the lawsuit in July 2002. "Those people in the advertisements don't really tell you what's in the food. It's all fat, fat, and more fat. Now I'm obese."

Hirsch eventually dumped Barber in favor of two hefty New York teenagers who claimed to have eaten at McDonald's on most days of the week for years. That lawsuit, which Hirsch intended as a class action, was dismissed twice, the second time with prejudice, for failing to adequately state a claim. The first time around, in January 2003, U.S. District Judge Robert Sweet declared that "any liability based on over-consumption is doomed if the consequences of such over-consumption are common knowledge....If a person knows or should know that eating copious orders of supersized McDonald's products is unhealthy and may result in weight gain...it is not the place of the law to protect them from their own excesses. Nobody is forced to eat at McDonald's....Even more pertinent, nobody is forced to supersize their meal or choose less healthy options on the menu."

To counteract this presumption of individual responsibility, Banzhaf thought Hirsch should have ditched his weak claim about misleading ads in favor of the two arguments that Sweet's ruling seemed to identify as the most promising. Citing McDonald's fries and Chicken McNuggets as examples, the judge noted that people might be surprised by all the ingredients in some of the chain's products (although the information is available online and upon request in the restaurants). If the plaintiffs could show that such items were not what they seemed, he said, "it may establish that the dangers of McDonald's products were not commonly well known."

The other argument to which Sweet seemed receptive was that fast foods are addictive, a theme that Banzhaf, the self-anointed "spark plug and spokesman for this controversial movement," emphasizes in the press releases he e-mails to anyone who might mention him in print or on the air. (In what may be a first for him, Banzhaf turned down the opportunity to be interviewed for this article.) Banzhaf is quick to latch onto any study that can be used to suggest that certain foods trigger a physiological compulsion to overeat. In October, for example, he trumpeted an article in *New Scientist* that cited, based on a review of a dozen or so studies with rats, "a growing body of evidence" that "fats and simple sugars can act on the brain the same way as nicotine and heroin." He announced that he had "sent a legal notice to several large food companies suggesting that, in light of the growing evidence that eating fattening foods can produce addictive effects on the brain similar to nicotine, they may have a legal duty to warn their customers."

Such research does not tell us anything important about overeating that we didn't already know. As the psychiatrist Sally Satel noted at the AEI conference on obesity in June 2003, "virtually every pleasure we encounter is associated with surges in dopamine," and brain images "cannot distinguish between an irresistible impulse and an impulse that is not resisted." Just as we did not need brain scans to recognize that smokers often have difficulty giving up tobacco—a fact that people have been noting for hundreds of years—we do not need rat studies to show that people find eating pleasurable, often eat more than they initially intend, regret their overeating, and have trouble cutting back to lose weight despite the health risks and social costs of being fat. In these respects, eating high-calorie foods, like any activity that provides pleasure or relieves stress, can be addictive, leading to habits that are hard to break. But jurors are not likely to blame fast food chains for the familiar sin of gluttony unless they are led to believe that McDonald's, Wendy's, and Burger King pump their food full of magical chemicals that enthrall customers and keep them coming back for more.

Banzhaf suggests that such chains are the main cause of rising BMIs. In a May 2003 press release, he cited a study that he said found "the proliferation of fast food restaurants...is responsible for over 65% of the current epidemic of obesity." The study, a statistical analysis published by the National Bureau of Economic Research in October 2002, looked at restaurants in general, not just fast food. It found that "the increase in the per capita number of restaurants makes the

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'I don't think the government can more likely to make Americans thinner: calisthenics every morning?

largest contribution to trends in weight outcomes, accounting for 69 percent of the growth in BMI." In their conclusion, however, the authors introduced a cautionary note that Banzhaf conveniently ignored: "A literal interpretation of this result implicates fast-food and full-service restaurants as culprits in undesirable weight outcomes. But a very different interpretation emerges if one recognizes that the growth in these restaurants, and especially fast-food restaurants, is to a large extent a response to the increasing scarcity and increasing value of household or nonmarket time." In other words, economic changes such as greater participation in the labor market by women have increased the demand for fast, convenient meals. As the NBER's summary of the paper put it, "fast-food or convenience meals should rightly be considered as much an effect as a cause of American eating patterns."

Interestingly, the same study also found evidence that declines in smoking have contributed to rising BMIs, since people tend to gain weight when they give up cigarettes. Banzhaf failed to note this finding, perhaps because he's afraid fat people might start suing anti-smoking activists.

Heavy Burden

Although Banzhaf repeatedly refers to "five successful fat lawsuits" in his press releases, none of them involved a jury verdict. More to the point, none involved a plaintiff who blamed a company for his obesity. One case, which was initiated by some of Banzhaf's students at GWU and led to a $10 million settlement in 2002, faulted McDonald's for advertising that its French fries were cooked in vegetable oil while failing to mention that they were precooked in beef fat, an omission that understandably upset Hindus and vegetarians. It was a "fat lawsuit" only in the sense that it involved cooking fat. The litigation "victories" tallied by Banzhaf also include New York City's 2003 decision to ban soda and sugary snacks from public school vending machines, which was not part of a lawsuit settlement, and Kraft's decision to stop using hydrogenated vegetable fat in Oreo cookies, which was announced two months after a quickly withdrawn lawsuit filed in May 2003 by a San Francisco attorney who admitted the hazards of such fat were too well-known for him to win his case.

While Banzhaf's bragging needs to be taken with a tablespoon of salt, that does not mean food lawsuits will never take off. Victor Schwartz, a leading civil defense attorney and expert on tort law who has been advising the National Restaurant Association, an industry trade group, says such cases face formidable barriers, including the difficulty of arguing that a product is defective simply because consuming too much of it can be dangerous and the challenge of tracing a plaintiff's obesity to one company's food. But he notes that law firms are monitoring the issue and that a 2003 conference on food-related litigation organized by Banzhaf and Northeastern University law professor Richard Daynard (another anti-smoking veteran) was well-attended. State and federal "cheeseburger bills" aimed at protecting food sellers from liability—one of which the U.S. House of Representatives approved by a 2-to-1 margin in March—show the industry is worried. Recent decisions by McDonald's to reformulate Chicken McNuggets and to eliminate "supersize" French fries and soft drinks also can be seen as defensive responses to the litigation threat.

"The greatest danger, I believe, does not come from individual lawsuits," Schwartz says. If a case gets as far as discovery, however, it may produce industry documents that support the image of devious companies tricking people at a young age into unhealthy habits they later have trouble breaking. And once the public has begun to fault Big Food for hooking kids on cheeseburgers and fries, Schwartz suggests, "a state attorney general or two could...bring a tobacco-like lawsuit against the food industry because of the cost obesity places on Medicaid....Then a lot of these legal barriers could crumble, just the way they did with tobacco." And as with tobacco, much of the anti-fat agenda, including higher food prices and marketing restrictions, could be achieved through lawsuit settlements, making it unnecessary to lobby legislators.

The rationale for such lawsuits is also the main rationale for the war on obesity. As Banzhaf put it in a May 2003 press release, "obese patients are contributing to

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Economist Tomas Philipson notes that because of developments that have been are better off being fatter and richer. I

skyrocketing Medicare and Medicaid outlays and costing thin taxpayers tens of billions of dollars a year." A study published last year in the journal *Health Affairs* estimated that the health care costs associated with excessive weight amount to something like $93 billion a year, half of it covered by Medicare and Medicaid. On average, medical treatment cost $732 more per year for the obese and $247 more for the merely overweight. (The increases in Medicare and Medicaid costs were statistically significant only for the obese.) "If people want to be 200 pounds," said the study's lead author, economist Eric Finkelstein, "then that's their choice. But ultimately, if the taxpayer is paying for those choices...that is where the justification for government involvement comes from."

As Finkelstein and his co-authors acknowledged, however, it's not clear that taxpayer costs are higher, on balance, than they would be if everyone were thin. In the case of smokers, economic analyses indicate that taxpayer savings from less health care in old age and fewer Social Security payments (because of shorter life expectancies) outweigh the costs of treating tobacco-related diseases. Finkelstein argues that the calculation is likely to come out differently in the case of obesity, partly because "the elderly obese have only a marginally shorter life expectancy." Yet the data from the Framingham Heart Study suggest that obesity and smoking have a similar impact on life expectancy. University of Chicago economist Tomas Philipson, whose work on weight trends is widely cited, says "it's not clear whether obese people are costing us more or costing us less."

More important, the argument based on taxpayer-funded health insurance proves too much. It gives the government an open-ended license to tax, regulate, or ban any behavior that might lead to disease or injury. In *Food Politics*, Marion Nestle declares that "obesity contributes to increased health care costs, thereby becoming an issue for everyone, overweight or not." When I ask her how far she would take this principle, she says that depends largely on how social norms evolve. "The government deals with all kinds of risky behavior: smoking, seat belts, alcohol—all of those," she says. "I think it's a case-by-case situation." But if, as Nestle insists, "diet is a political issue," what isn't? The same logic suggests the government should take an interest in how much sleep you get, what kind of sex you have, and whether you floss regularly.

Disease Control

Both Nestle and Brownell dismiss defenses of individual choice and responsibility as the self-serving rationalizations of profit-hungry corporations. But while anti-fat activists treat "freedom" as an empty corporate slogan, they seem to think the mantra of "public health" can justify any policy proposal. The phrase allows them to smuggle in the assumption that government action is appropriate without having to offer an argument. Like the habit of calling rising BMI trends an "epidemic," this rhetorical trick obscures the fact that obesity is not a contagious disease; it does not spread from person to person in a way that justifies state action.

Brownell does not acknowledge a distinction between voluntarily assumed risks and risks imposed on others. He wants us to think of efforts to "clean up" the "toxic food environment" as equivalent to restrictions on air and water pollution. "Prudent public health practice structures the environment so citizens have lowered exposure to hazards," Brownell and Horgen explain. They seem oblivious to the totalitarian implications of such a broadly understood "public health" agenda, which makes even the most personal choices subject to group control. "Before progress can be made on changing the American diet," they write, "there must be collective agreement that the population should be eating more of some foods and less of others." They call their goal a "Braver New World," apparently without recognizing the chilling connotations of that phrase. And although Brownell has said "a militant attitude is warranted" when it comes to food, he describes his policy proposals as "centrist."

In some respects, Brownell does not seem to have the courage of his collectivist convictions. When I facetiously suggested at the AEI conference that, rather than tax certain foods (which might be eaten by the thin as well as the fat),

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Americans have been getting fatter tremendously positive on balance. "We would not want to go back."

the government should tax people for each pound over their ideal weight, he objected. Brownell's complaint was not that such a system would be tyrannical because how much you weigh is your business, not the government's. Plainly, he doesn't believe that. Instead, he worried that a weight tax puts too much emphasis on individual responsibility rather than the environment. But if the prices people pay for food are part of the environment that encourages obesity, so is the price they pay for being fat.

Speaking of which, Brownell condemns "anti-fat media messages" and the social stigma attached to obesity, saying people should not be blamed for their failure to resist the forces that make it is so difficult to stay thin. But from a "public health" standpoint, fairness is not the issue. The only question is whether making fat people miserable encourages them to lose weight. Brownell suggests it doesn't, but why would such pervasive social pressures be less effective than a tax on Doritos?

Similarly, last year John Banzhaf told the *Obesity Policy Report,* "I don't think the government can order [people] to exercise." Why not? Which is more likely to make Americans thinner: suing McDonald's, or mandatory calisthenics in the public square every morning? If you assume that slimming us down is a proper goal of government, it's hard to see the objection to policies that show promise of actually working, as opposed to enriching lawyers or making a statement.

While the idea of legally compelled jumping jacks may seem utterly fanciful (as the Twinkie tax did until recently), it is by no means the most extreme scenario suggested by a government-waged war on fat. As economist Tomas Philipson notes, Americans have been getting fatter for at least a century, primarily because of developments that have been tremendously positive on balance. Technological improvements in agriculture and processing have made food so cheap that even the poorest people in developed countries can afford to eat more than they need to survive. (Indeed, the poorest Americans are the fattest—an astonishing reversal of the relationship between wealth and weight that prevailed for most of human history.) Work is much less arduous than it used to be, Philipson notes, so "the price of spending calories has gone up....Exercise has been pushed from labor to leisure." Rather than getting paid to expend calories, we now pay to do so, whether in leisure time or in money spent on health clubs, exercise equipment, and outdoor recreation. Labor-saving devices from the car and the washing machine to the remote control and the networked computer mean that we expend fewer calories away from work as well as on the job. We can choose from an amazing variety of entertainment options, many of them sedentary.

All these developments have contributed to our expanding waistlines, but as Philipson puts it, "We are better off being fatter and richer. I would not want to go back." Given this reality, it's rather disconcerting to see Brownell and Horgen proclaim, "Fundamental changes are necessary, because fundamental economic factors are central to the obesity epidemic."

Those who insist upon such "fundamental changes" cannot understand why others find the prospect alarming. Brownell thinks his critics are not being constructive if they fault his plan for remaking the world without offering a plan of their own. The same sort of incomprehension was apparent at the AEI conference on obesity, where University of Chicago law professor Richard Epstein argued that fat people can impose costs on others only if the government forces taxpayers to pick up the tab for their health care or prevents insurers and employers from discriminating based on weight. Eliminate these distortions, he said, and weight control would be purely a private matter. In that case, a hostile audience member asked him, what are *you* doing to prevent obesity? Epstein's answer: "I play basketball." ▯

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Dr. Feelscared

Drug warriors put the fear of prosecution in physicians who dare to treat pain.

Maia Szalavitz

On February 1, 2002, Cecil Knox was seeing patients in his Roanoke, Virginia, clinic when more than a dozen federal agents burst through the doors with guns drawn. Helmeted, shielded, and wearing bullet-proof vests, they terrified waiting patients and employees. One worker later told the Pain Relief Network, a patient advocacy group, she thought she and her husband, who was helping her in the office that day, would be shot. She looked on in horror as an agent put a gun to his head and ordered, "Get off the phone! Now!"

Knox, a pain management specialist who had been practicing medicine in Roanoke for seven years, was dragged out in handcuffs and leg irons. The local U.S. attorney's wife, a TV reporter, was among the journalists tipped about the raid in advance. She stood outside with a gaggle of other media people to announce her husband's triumph. Knox's assets were frozen and bond set at $200,000. He and several employees soon faced a 313-count indictment, including charges of drug distribution resulting in death or serious bodily injury, prescription of drugs without a medical purpose, conspiracy, mail fraud, and health care fraud. Prosecutors said Knox had illegally distributed millions of dollars' worth of OxyContin, a timed-release version of the narcotic painkiller oxycodone.

William Hurwitz, a McLean, Virginia, internist and prominent pain specialist, received similarly heavy-handed treatment when he was arrested last fall. Hurwitz, who is Jewish, was visiting his children on Rosh Hashanah eve when federal agents descended upon his ex-wife's house in McLean and took him away in handcuffs. As with Knox, the government froze Hurwitz's assets; his bail was set at $2 million. He was charged with 49 felony counts, including drug trafficking resulting in death or serious injury, conspiracy, and running a criminal enterprise.

Like Knox, Hurwitz attracted attention largely because of his OxyContin prescriptions. Attorney General John Ashcroft said "the indictment and arrests in Virginia demonstrate our commitment to bring to justice all those who traffic in this very dangerous drug." Prosecutors said Hurwitz was "no better than a street corner crack dealer" who "dispenses misery and death." Assistant U.S. Attorney Gene Rossi had earlier declared that the feds would "root out" such doctors "like the Taliban."

Knox and Hurwitz are just two recent targets of an aggressive push by the Drug Enforcement Administration (DEA) and the Department of Justice (DOJ) to impose their judgments about the proper use of opioid painkillers (drugs derived from opium and synthetics that resemble them) on doctors throughout the country. In their attempt to prevent prescription drug abuse, the DEA and the DOJ in effect have taken upon themselves the authority to regulate the practice of medicine, traditionally the province of the states. Worse, they have transformed disagreements about treatment decisions into criminal prosecutions, scaring physicians away from opioids and compounding the suffering of patients who have trouble getting the drugs they need to relieve their pain.

Drug Control vs. Pain Control

Few disagree that pain is already poorly treated in the U.S. "Even the DEA admits that 30 to 50 million people are undertreated for pain," says Ronald Libby, a professor of political science at the University of North Florida who has studied the issue. A 1999 survey of 805 chronic pain patients conducted by Roper Starch for the

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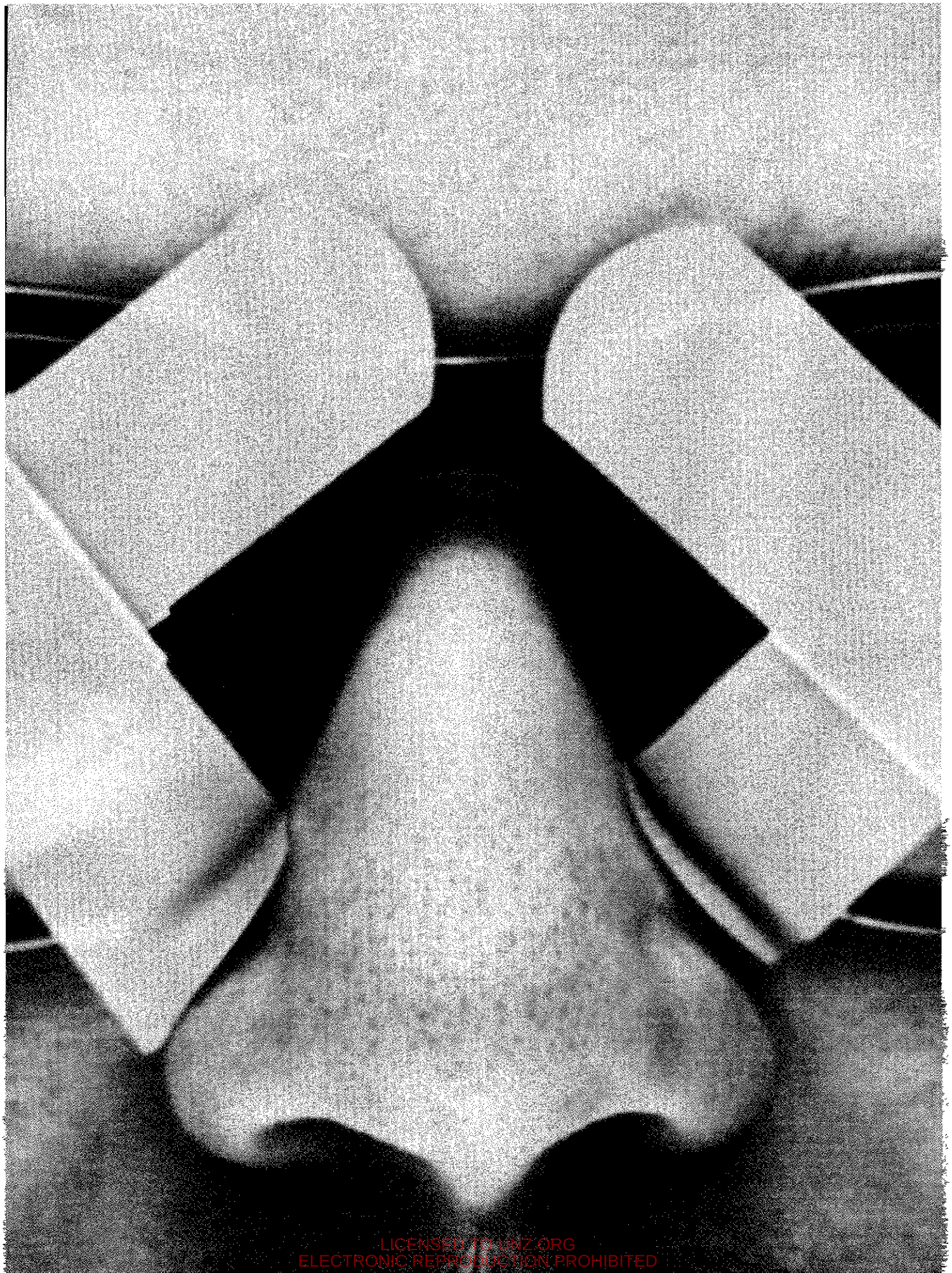

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American Pain Society and Jannsen Pharmaceutica found that roughly half of those with serious chronic pain could not find relief—and that the more severe the pain, the less likely it was to be alleviated. Other surveys have yielded similar results. Only a tiny fraction of the nation's nearly 1 million health care professionals licensed to prescribe controlled substances are willing to consistently use opioid medications, recognized as the best drugs for severe pain. A 2003 analysis by the Ft. Lauderdale *Sun-Sentinel* found that less than 3 percent of Florida's doctors prescribed the majority of opioids for Medicaid patients there.

During the 1990s, pain experts, patient advocates, and drug makers sought to reduce exaggerated fears about opioids and increase prescribing. Research and clinical experience had shown that few patients without a prior history of serious drug abuse get hooked on narcotics during pain treatment, resulting in addiction rates no higher than those seen in the general population. In one important study, reported in the journal *Pain* in 1982, the researchers surveyed 181 staffers of 93 burn units who had seen more than 10,000 patients and worked in the field an average of six years. Most patients had been given opioids to cope with agonizing debridement treatments, but the staff could recall no cases of addiction in anyone without a prior history of it. A study of 100 people taking opioids for chronic pain over prolonged periods, reported in the *Journal of Pain and Symptom Management* in 1992, likewise found that none became addicted. No new evidence has contradicted this research, and a study of prescribing from 1990 to 1996, published in 2000 in *The Journal of the American Medical Association*, found that massive increases in the use of particular opioids were not associated with proportional increases in misuse; in fact, as use of some medications rose, emergency room "mentions" of them dropped.

William Hurwitz, photo by Jeremy Snavely, courtesy of the Association

But in the minds of police and prosecutors, such reassuring findings were overwhelmed by concerns about what was dubbed the OxyContin "epidemic." Introduced by Purdue in 1995, OxyContin was designed to deliver steady pain relief over an extended period of time, avoiding the peaks and valleys of shorter-acting pills that have to be taken several times a day. It soon became a $1 billion blockbuster. When illegal drug users figured out how to defeat its timed-release mechanism and get all the oxycodone at once, street demand—and media coverage—soared. (See "The Agony and the Ecstasy," April 2003.)

Most news stories neglected to mention that OxyContin abusers generally were not new addicts freshly minted from innocent patients by irresponsible doctors. Rather, they were drug aficionados who scammed physicians for the latest media-hyped high. According to data from the federal government's National Survey on Drug Use and Health, some 90 percent of illicit OxyContin users have also used cocaine, psychedelics, and other painkillers. The typical profile is a person who has abused many drugs in many combinations for many years. OxyContin poses no greater addiction risk than other opioids when taken as directed. But the media helped teach addicts and thrill seekers how to do otherwise.

In 2002 the *Charleston Daily Mail* quoted former Surgeon General C. Everett Koop as saying "exaggerated news stories" have "hyped [OxyContin] for recreational use into being almost irresistible." In some cases, OxyContin-related pharmacy robberies followed local exposés. On February 16, 2001, less than a week after the Cleveland *Plain Dealer* reported on the OxyContin "epidemic," someone robbed a local pharmacy at gunpoint, taking only OxyContin. *The Cleveland Free Times* quoted a drug dealer who said a customer had shown him a newspaper clipping about OxyContin, asking where he could get it.

While the OxyContin panic does not seem to have deterred addicts, it has scared doctors.

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If patients function perfectly well on doses that are supposed to incapacitate, stupefy, and derange, why is it so important for the government to protect us from these substances?

"Every time there is one of these trials," says Libby, "another 50 to 60 doctors drop off from prescribing." Among the doctors recently targeted by federal or state prosecutors are Frank Fisher of Anderson, California, charged with three counts of murder and 24 drug- and fraud-related charges; Jeri Hassman of Tucson, Arizona, charged with 362 counts of "drug dealing with a pen"; James Graves of Pace, Florida, convicted in 2002 of causing the deaths of four patients and sentenced to 63 years in prison; Denis Deonarine of West Palm Beach, Florida, charged with 79 felony counts, including first-degree murder, based on a patient's death from a self-administered overdose; and Deborah Bordeaux of Myrtle Beach, South Carolina, who in February was sentenced to eight years in prison for working less than two months at a pain clinic targeted by the feds as a "pill mill."

The sheer number of charges in these cases makes defending the doctors difficult because it's natural for jurors to think that with so many counts, some crime must have occurred. But this impression is misleading. The essence of the prosecutors' cases is that ordinary events in a doctor's office become criminal when the doctor steps outside the bounds of legitimate medicine. It's easy to generate lengthy indictments by portraying the doctor's entire practice as a criminal enterprise and redefining everyday activities related to the practice as offenses.

Each prescription of a controlled substance can be made into several crimes. In addition to drug distribution, it can be described as health care fraud because charging or billing third parties for practices that aren't really medicine is illegal. If the prescription or a bill has been sent through the mail, it can also be mail fraud. Every deposit of the physician's paycheck becomes money laundering. Seeing a patient who turns out to be a drug dealer or addict can lead to a conspiracy count, as can working with one's colleagues. Most shocking of all, any death that can in any way be connected to use of the doctor's prescriptions becomes a charge of drug dispensing resulting in death or serious injury—even if the person who died stole the drug from a legitimate patient, lied to get the drug, used it with other drugs or alcohol, or expired while suffering from a potentially fatal illness.

Physicians face these daunting indictments with their assets frozen, their bail set as if they were drug kingpins, and their livelihoods ruined by license suspensions or bail conditions. In these circumstances, mounting a defense is extremely difficult. "It makes it impossible to retain private counsel," says Virginia attorney James Hundley, who represented William Hurwitz prior to his indictment. (He is now using a public defender.) California attorney Patrick Hallinan, who has represented Frank Fisher and has advised Hurwitz, says, "They're throwing the entire penal code at them."

The tremendous pressure that such charges bring to bear is illustrated by the 2002 federal indictment of eight doctors who worked at the Comprehensive Care and Pain Management Center in Myrtle Beach, South Carolina. Threatened with hundreds of years in prison and fearful that his wife (an employee) could also be indicted, clinic owner Michael Woodward pleaded guilty and testified that he had schemed with the other doctors, including Deborah Bordeaux, to sell drugs. South Carolina is a conservative state, and Woodward had seen his clinic repeatedly attacked in the news media. The Woodwards may also have feared that their young children could lose both parents to long prison terms.

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Another clinic doctor, Benjamin Moore, told Siobhan Reynolds, founder of the Pain Relief Network, that he and his colleagues had done nothing wrong. When he, too, found that he faced life in prison, he pleaded guilty in desperation. But according to his brother, he could not go through with testifying against co-workers he believed to be innocent. Instead he hanged himself from a tree in his mother's backyard.

Doctors As Dealers

In fiscal year 2003, according to the DEA, the federal government investigated 557 physicians and arrested 34. Betsy Willis, chief of the Operations Section of the DEA's Office of Diversion Control, says "the numbers of federal prosecutions have been relatively consistent for the last four years." The DEA reports 81 arrests in fiscal year 1999, 83 in fiscal year 2000, 78 in fiscal year 2001, and 68 in fiscal year 2002.

Even if the number of federal prosecutions has declined, they have received much more attention since the news media began highlighting OxyContin abuse in 2001. And the alarm about OxyContin clearly has led to increased enforcement efforts: Last year the DEA doubled controlled substance licensing fees for health care providers to fund more investigations, and in March the Office of National Drug Control Policy unveiled "a coordinated drug strategy to confront the illegal diversion and abuse of prescription drugs." The strategy includes closer monitoring of prescriptions, coupled with "outreach" and "education" aimed at making doctors more skeptical of patient requests for painkillers.

Cecil Knox and his family leaving the federal courthouse in Roanoke, © Josh Meltzer *The Roanoke Times*

Until recently, investigators would approach a physician if they suspected a patient of diversion; now they try to build a case against the doctor. "This is new in my experience, and I have been doing this for 25 years," says David Brushwood, a professor of pharmacy at the University of Florida. "I've always seen drug control and health care work together....They were never really at odds until the last two years....The way it used to be was that when drug control officials saw the beginnings of a pattern of diversion, they would say to the doctor, 'It looks like a problem is developing; let's work together to fix it.' Now when they see a small problem, they conduct surveillance and wait for it to become big, then swoop in with a massive show of force."

Even when there is no direct evidence of diversion, investigators and prosecutors may decide a doctor is being too generous with painkillers because they are influenced by an outmoded view of addiction. According to this view, the essence of addiction is "physical dependence," changes in the body that result in withdrawal symptoms when drug use is halted. Based on this criterion, all pain patients become addicts when they take opioids long enough.

In recent decades, researchers have recognized the inadequacy of this definition. On the one hand, some drugs that don't cause physical withdrawal symptoms (for example, cocaine) clearly can produce a potentially self-destructive desire for more. On the other hand, the vast majority of those who try even the most addictive substances don't develop lasting habits. Researchers therefore redefined addiction to emphasize craving and negative consequences rather than withdrawal symptoms. The diagnostic manual of the American Psychiatric Association now recognizes that physical dependence is neither necessary nor sufficient for addiction, which is characterized by continued use of a substance despite ongoing drug-related problems. For pain patients, of course, the drug produces

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Pain doctor Benjamin Moore could not go through with testifying against co-workers he believed to be innocent. Instead he hanged himself from a tree in his mother's backyard.

fewer problems and greater functioning, rather than the reverse.

Some patient advocates say drug warriors can't accept this reality because it undermines the logic of prohibition: If most people don't get hooked when exposed to the "hardest" of all categories of drugs, if patients' lives get dramatically better and they function perfectly well on doses that are supposed to incapacitate, stupefy, and derange, why is it so important for the government to protect us from these substances? From this point of view, the DEA must fight pain control because functional patients on high doses of opioids threaten its authority. "It completely puts the lie to the whole criminal approach because it shows that these molecules are not evil, that people can and do function well on them," says the Pain Relief Network's Siobhan Reynolds. "It undermines the whole basis for the war on drugs and makes it a strictly scientific/medical issue."

Whatever their reasons, law enforcement officials (along with most of the public and many physicians) still cling to the old-fashioned view of addiction as a biochemical process that inevitably results from extended use of certain drugs. In the Myrtle Beach case, federal prosecutors said in court (before being forced to retract their claim due to contrary testimony) that *none* of the clinic's 3,000 patients was "legitimate"; in other words, in their view every pain patient of all eight doctors was an addict.

The DEA defines addicts as "habitual" users of narcotics who have "lost the power of self control with reference to [their] addiction" or whose use "endangers the public morals, health, safety, or welfare." From this perspective, pain patients could be considered addicts who have "lost control" in the sense of needing the drug to function.

Many prosecutors do not understand the distinction between addiction and physical dependence or recognize the growing acceptance of opioids in medicine. Says John Burke, vice president of the National Association of Drug Diversion Investigators, "Do I think some prosecutors and law enforcement officers are not well educated? Absolutely." A 2003 study published in the *Journal of Law, Medicine, and Ethics* found that nearly three-quarters of prosecutors in four states believed simply taking opiates poses a moderate or high risk of addiction. Holding that view was one of the best predictors of who would choose to prosecute physicians in a hypothetical case designed to reflect good pain practice. Just under half of prosecutors surveyed said they would recommend a police investigation merely on the basis of evidence that a physician was prescribing high doses of opioids to some patients for more than a month, something that is perfectly legitimate in cases involving severe chronic pain.

Prescriptions for Trouble

Frank Fisher seems to have been targeted based on just this sort of suspicion. At his Northern California clinic, the Harvard Medical School graduate accepted patients on Medicaid and Medi-Cal (California's health insurance for the poor) that most other physicians refused, and he tried to treat their pain as aggressively as he would treat anyone else's. In February 1999 state law enforcement agents raided Fisher's clinic and arrested him for drug dealing, fraud, and murder. His bail was set at $15 million. State prosecutors accused him of "creating a public health epidemic" of OxyContin abuse and death. They implied that he must be a drug dealer because he was the largest prescriber of the drug under Medi-Cal.

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"There's still one group of trial lawyers that has been left alone to go about their dirty work with few restrictions," says one activist. "These are the government prosecutors."

But in a context where fear of prosecution leads most doctors to under-prescribe, anyone who prescribes what is necessary for severe pain will be a top prescriber. Even Burke admits that prosecuting doctors has a chilling effect on their colleagues' treatment decisions. "I know from lecturing thousands of physicians that there is no question but that it does," he says. "The thing we don't want to happen is that physicians don't prescribe appropriately because of these cases, but I know that it happens. I have to be honest." Burke also recognizes that there is no ceiling on opioid doses: When patients develop tolerance, they may need massive doses that would kill someone who had never taken the drug. "Physicians should not be targeted simply on volume," he says. "That can be a huge mistake."

The DEA insists physicians aren't targeted based on volume alone. But Fisher believes he was. While patients with moderate pain can be treated effectively with low doses of opioids, he explains, severe pain requires that the dose be adjusted ("titrated") to a level that maximizes pain relief and minimizes side effects. "To get a sense," he says, "I titrated about two dozen patients, and they ended up taking almost half of the OxyContin 80-milligram pills prescribed in California in 1998. What that tells you is that nobody else titrated."

Fisher was jailed for five months, during which time the prosecution's case began to evaporate. First, the murder charges were reduced to manslaughter by the judge, who saw no proof of intent. Then the truth about these "killings" came out. One death involved a passenger who died when her spine was severed in a van accident. Fisher was charged with her "murder" because she had high levels of OxyContin in her blood. Another "victim" had taken drugs stolen from a patient, while a third died of a self-administered overdose two weeks after Fisher was incarcerated.

During cross-examination in pretrial hearings, it was revealed that seven attempts by undercover agents to get drugs from Fisher had been rebuffed. "I had a screening process for those who tried to get controlled substances," he says. "I screened out 60 percent of those, and apparently the agents were amongst them."

In January 2003, four years after Fisher's arrest, a state judge dismissed all the charges against him because prosecutors had tried repeatedly to delay the trial. But this year prosecutors decided to pursue another set of charges against him. Instead of homicide, drug dealing, and felony fraud involving $2 million in Medi-Cal reimbursements, they charged him with eight misdemeanor counts of fraud. Prosecutors would not put a dollar value on the offenses, but Fisher said they added up to $150. The jury agreed with Fisher's expert, who said the billings in question didn't warrant civil penalties, let alone criminal charges, and he was acquitted of all counts in May. He still faces possible disciplinary action by the state medical board as well as civil suits by patients' relatives. Fisher forwarded an e-mail message from a juror who said: "Now that I am home and can read about you on the Internet, my heart really goes out to you...I was upset that the prosecutor wasted my time and the court's time on such a weak case. But now that I know what you have really been through I feel embarrassed and selfish to be thinking about my own time. I hope you can reopen your clinic some day and get back to practicing medicine...Thanks for doing the job most doctors won't."

Unlike Fisher, other doctors fighting prosecutions based on their opioid prescriptions so far have enjoyed only partial victories. Last fall Cecil Knox's federal trial in Virginia got off to

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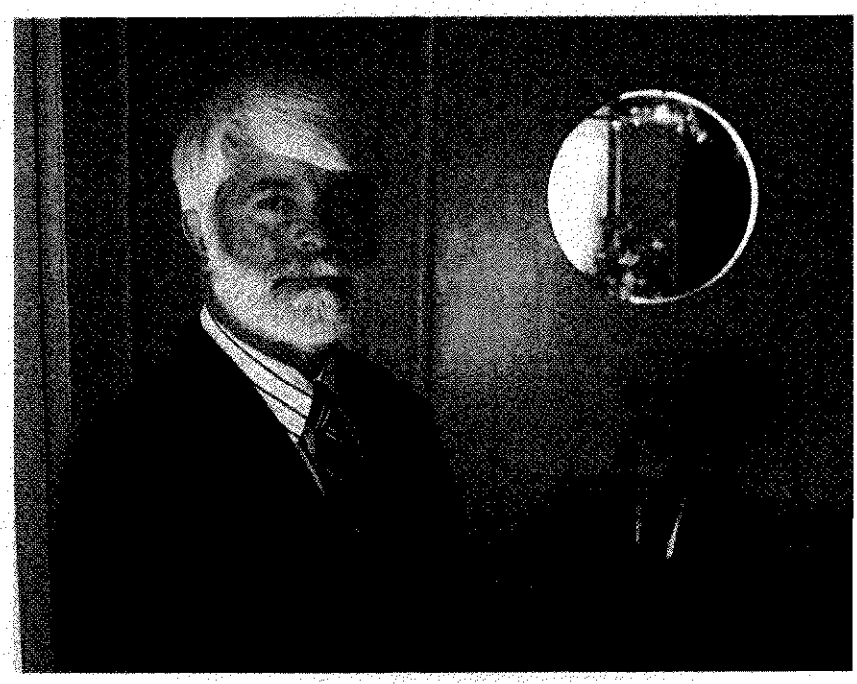
an inauspicious start for prosecutors when their first witness, who claimed Knox had traded prescriptions for marijuana, couldn't identify him in the courtroom or from photographs. The jurors ultimately acquitted Knox of about 30 out of 69 charges. But due to a single holdout who voted guilty, they hung on the remaining charges, including the most serious. In January prosecutors refiled the case, this time with 95 charges.

Also in January 2004, federal prosecutors agreed to drop 358 of their 362 charges against Tucson pain specialist Jeri Hassman, who pleaded guilty only to four counts of failing to report patients for infractions such as taking a recently deceased relative's OxyContin. On the same day, a Florida judge rejected a first-degree murder charge against West Palm Beach physician Denis Deonarine, based on the death of a patient who succumbed to "polydrug toxicity" after a night of drinking and drug use. But in March state prosecutors filed a new murder charge under a different statute, and Deonarine also faces 79 other charges stemming from his prescription of OxyContin and other opioids.

Second Opinions

Eli Stutsman, an appeals attorney who is representing Myrtle Beach physician Deborah Bordeaux at the behest of the Pain Relief Network, thinks he may have found a way to stop such prosecutions, at least at the federal level. Stutsman also represents the state of Oregon in its thus-far successful battle with Attorney General Ashcroft over physician-assisted suicide, a dispute that hinges on what the federal drug laws mean and how they should be enforced. A federal appeals court's decision in that case suggests the DEA is overstepping its statutory authority when it tells doctors how controlled substances should be prescribed.

In 2001 Ashcroft tried to nullify Oregon's assisted suicide law with a directive that declared the prescription of drugs for suicide a violation of the Controlled Substances Act (CSA). Under the CSA, a prescription is "authorized" if it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice." If a doctor writes prescriptions to



A broke Frank Fisher now lives at his parents' house. ©Michael Maloney, the *Chronicle*

order for money, trades drugs for sex, or prescribes drugs for resale, he is operating outside "the usual course of professional practice." In such cases, the CSA authorizes the DEA to revoke the registration that allows physicians to prescribe controlled substances and to pursue criminal charges.

But Stutsman concluded that in recent cases the DEA has taken the statute's language out of context, improperly reading "for a legitimate medical purpose" as a requirement separate from prescribing in "the usual course of professional practice." Instead of claiming that the accused doctors weren't sincerely trying to treat patients, federal prosecutors have argued that the defendants wrote prescriptions that weren't "medically necessary" or that had no "legitimate medical purpose." Thus the DEA claims the authority to determine what doses of which drugs a doctor may use and what medical purposes are legitimate. Those are questions about the standard of medical care—the sort of questions addressed in malpractice litigation and civil actions by state medical boards.

The DEA insists it is correctly interpreting the law. "We're only looking at instances where we have information [that] practices outside of the norm are taking place," says Pat Good, acting deputy director of the DEA's Division of Diversion Control. "We're not talking about avant-garde medicine where patients are doing really well. We're talking about cases where patients are selling drugs on the street, using fictitious names on prescriptions, overdosing, and getting arrested."

But in *Oregon v. Ashcroft*, the assisted suicide case, U.S. District Judge Robert Jones found Stutsman's reasoning

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compelling. Ashcroft had argued that the CSA gave federal prosecutors the right to decide that assisting suicide is not part of legitimate medical practice. Jones disagreed: "The CSA was never intended, and the USDOJ and the DEA were never authorized, to establish a national medical practice [standard] or act as a national medical board. To allow an attorney general—an appointed executive whose tenure depends entirely on whatever administration occupies the White House—to determine the legitimacy of a particular medical practice without a specific congressional grant of such authority would be unprecedented and extraordinary." Last May the U.S. Court of Appeals for the 9th Circuit affirmed Jones' decision, finding that "the attorney general's unilateral attemp to regulate general medical practices historically entrusted to state lawmakers...far exceeds the scope of his authority under federal law."

Stutsman intends to use similar reasoning in his appeal of Deborah Bordeaux's conviction. Her prescribing never exceeded manufacturers' recommendations or those of her state medical board; there was no exchange of drugs for sex or other evidence that she was not practicing real medicine. "What makes this particularly outrageous," says Stutsman, "is their confusion of civil and criminal standards to start with. It's an excessive exercise of federal power based on a misapplication of federal law."

Suicide Is Painless

Kathryn Serkes, spokesperson for the Association of American Physicians and Surgeons (AAPS), sees these cases as part of a long-term trend toward increased prosecutorial power that includes sentencing guidelines, mandatory minimums, and forfeiture laws. The Coalition Against Prosecutorial Abuses, a group she is organizing to fight this trend, declares: "There's still one group of trial lawyers that has been left alone to go about their dirty work with few restrictions—and all at taxpayers' expense. These are the government prosecutors."

The AAPS, along with the Pain Relief Network, has been vocal in denouncing the federal and state doctor prosecutions. The group's Web site warns: "If you're thinking about getting into pain management using opioids as appropriate: DON'T. Forget what you learned in medical school—drug agents now set medical standards." The AAPS urges doctors inclined to ignore this advice to be aware of the risks, including "years of harassment and legal fees," loss of income and assets, and professional ostracism.

Despite increasing outrage from physicians and patient advocates, the DEA maintains that people in pain have nothing to fear from the crackdown. "A legitimate patient with legitimate medical problems should have no problem getting another doctor if their doctor has been arrested," says the DEA's Willis.

Anti-pain activists vigorously dispute that. "This is causing doctors not to prescribe," says the Pain Relief Network's Siobhan Reynolds, "and that means patients will be in hell." Several of the prosecutions have been associated with suicides by devastated patients who couldn't get effective treatment elsewhere. Common Sense for Drug Policy reports that one of William Hurwitz's patients killed herself on March 16. Frank Fisher says one of his patients drove her car in front of a train.

In a forthcoming documentary by Reynolds, pain patient Skip Baker says, "It's a devastating health care crisis, to the point that thousands are committing suicide that nobody knows about. Most pain patients know—everybody's planning to run into this bridge abutment or that tree or whatever to make it look like an accident." Ronald Myers, a Mississippi physician and minister who founded the American Pain Institute, observes: "They want to talk about deaths associated with OxyContin. But no one wants to talk about these deaths. There's been an epidemic of suicide."

Laura Cooper, an attorney with multiple sclerosis and a former patient of Hurwitz, moved to Oregon when his practice was shutting down. Her new doctor "is also under the microscope," she says. "All of these guys are on their way out—if not on their own, the government is on the way to putting them out. Anybody who would treat me the way I need to be treated is not long for American medicine. When my doctor goes down, I don't know what I'll do."

Since Cooper lives in Oregon, she notes, "by law I can get drugs to kill myself, but not to treat my pain. The doctor could say, in effect, 'I'm not trying to treat pain; I'm trying to kill her,' and that would be more acceptable. Clearly, something's a little off kilter. My medical needs are less important than their war on drugs." ▮

Maia Szalavitz (maia@echonyc.com), a senior fellow at the media watchdog group STATS (www.stats.org), is writing a book on teen behavior modification programs.

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PATIENTS TO FEDS: "Hands off our medical marijuana." The Court agrees -- it's up to the states.

On September 23, 2002, Mike and Valerie Corral's medical marijuana hospice near Santa Cruz, California, was raided just before dawn by federal agents. They were held at gunpoint while their co-op garden was destroyed.

The raid sparked outrage from Santa Cruz officials because the co-op was a text book example of what California's medical marijuana laws were supposed to allow: a safe place for the sick and dying, with a common garden, where the patients could care for each other. The city, county, and the co-op sued the federal government.

On April 21, U.S. Circuit Court Judge Jeremy Fogel barred the Justice Department from interfering with the Corrals, their 250 fellow patients, or their marijuana garden.[1] Judge Fogel cited Raich v. Ashcroft, the recent Ninth Circuit decision that found the federal government has no jurisdiction over patients who grow their own plants.[2]

The latest government study says, "cannabinoid drugs might offer broad spectrum relief not found in any other single medication."[3] A TIME-CNN poll shows that 80 percent of Americans support medical marijuana for the seriously ill.[4] Isn't it time for the federal government to catch up with science and the people?[5]

CommonSenseDrugPolicy.org, DrugWarFacts.org, MedicalMJ.org

Mike Gray, Chair; Robert Field, Co-Chair 717-299-0600

1.Santa Cruz v. Ashcroft, C-03-1802JF 2.Raich v. Ashcroft 9th Cir No 03-15481 3."Marijuana and Medicine" Inst. of Medicine, 1999 4. TIME Nov 4 2002
5.To help, contact Americans for Safe Access www.SafeAccessNow.org 888-929-4367 or WAMM at www.wamm.org 831-425-0580

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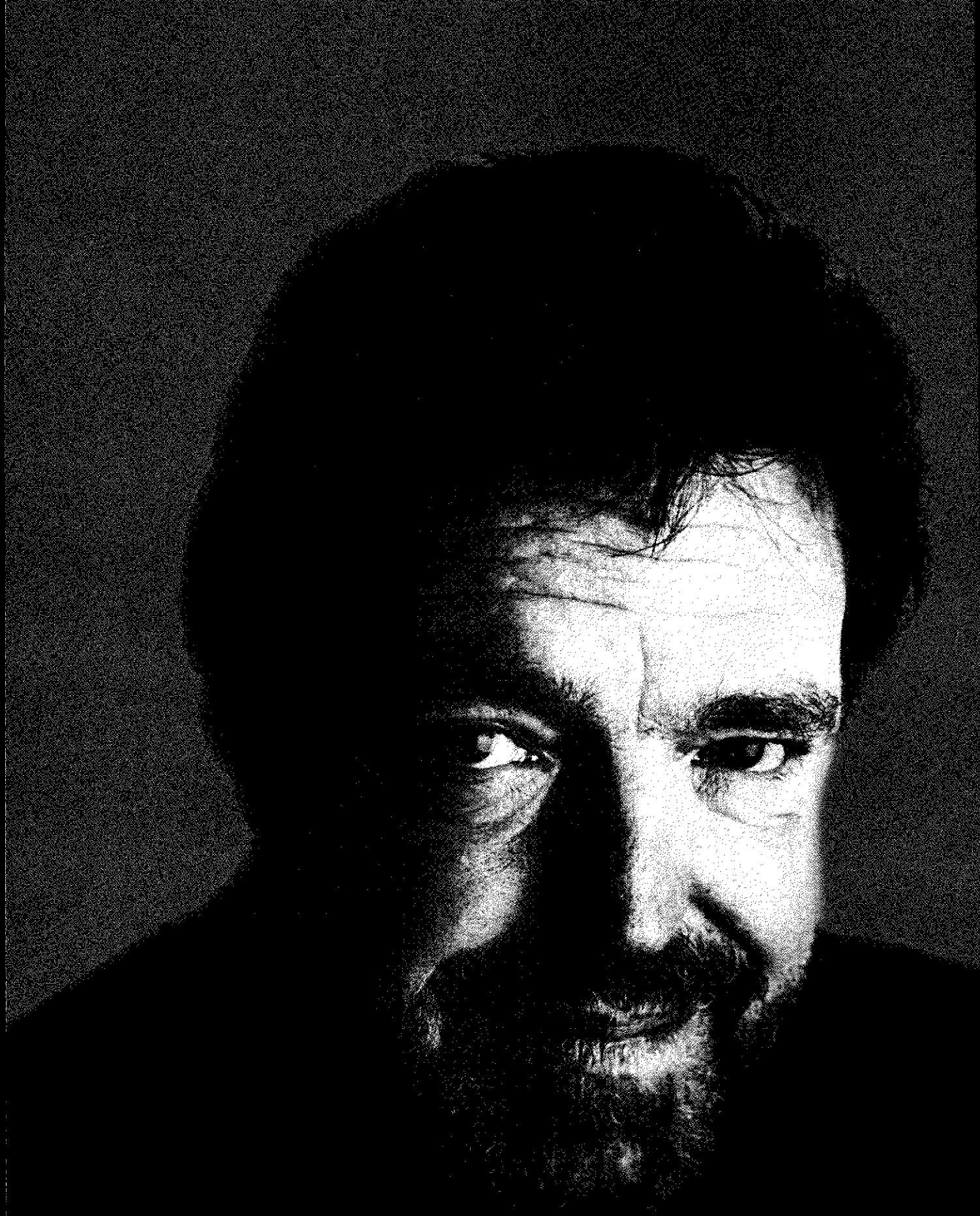

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John Perry Barlow 2.0

The Thomas Jefferson of cyberspace reinvents his body—and his politics.

Interviewed by Brian Doherty

John Perry Barlow is one of those fascinating figures that American culture regularly produces to our great benefit and occasional consternation. Born in 1947 in Wyoming, he ran his family's cattle ranch for 17 years. Unique among Equality State ranchers, his words filled the ears of millions, because he wrote lyrics to the music of his childhood buddy, Bob Weir of the Grateful Dead. (Among his credits are "Estimated Prophet," "Hell in a Bucket," and "Throwing Stones.") Barlow and Weir met in the early 1960s at a Colorado prep school for, as Dead biographer Dennis McNally gently described it, "boys with behavioral problems."

In the '80s, Barlow became fascinated by the new world opening up through personal computers, and he helped popularize the term and concept of cyberspace. Barlow took his way with words—and the objections to authoritarianism that lead boys to display "behavioral problems"—and launched the Electronic Frontier Foundation (EFF) in 1990 with his computer industry pals Mitch Kapor, founder of Lotus, and John Gilmore, an early employee of Sun Microsystems. EFF is a San Francisco–based political advocacy and legal action group dedicated to preserving and extending liberty in cyberspace. Barlow is currently its vice chairman.

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In its first major case, EFF gave legal support to Steve Jackson Games, an Austin-based company that had been raided—and had all its computers stolen—by the Secret Service, which was seeking hacked telephone security documents. This case helped establish the principle that electronic mail, like personal papers, cannot be seized without warrants. Since then, EFF has played a vital role, through legal action and political agitation, in fighting attempts to mandate government access to all encrypted computer communications, stymieing efforts to restrict the free sale and export of cryptography, and battling laws such as the Communications Decency Act, which would have restricted speech on the Internet.

In 1996 Barlow became the Thomas Jefferson of the wired generation by authoring the doc forwarded 'round the world, "A Declaration of the Independence of Cyberspace." In it, he famously declared to all governments that cyberspace was "naturally independent of the tyrannies you seek to impose on us....Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are based on matter. There is no matter here."

Barlow no longer runs that Wyoming ranch, and these days he calls himself "a free agent and peripheral visionary." His 1994 *Wired* essay on the future of copyright in a digital world, "The Economy of Ideas," is taught in many law schools; his songs are sung wherever devotees of free-flowing jam bands, from the Dead to his new collaborators String Cheese Incident, gather to celebrate. (These two sides of his persona are not unrelated: Barlow's views on intellectual property were influenced by his experience with the Dead, who famously allowed audience members to tape their concerts and openly encouraged trading, though not selling, of the tapes. By all accounts, this actually expanded the band's audience and profits.)

Barlow recently surprised many of his libertarian friends by announcing that merely living a bohemian libertarian lifestyle was no longer sufficient. For most of his public career, Barlow had emphasized staking out one's liberty in your personal life and in the arena of ideas, not the scrum of partisan politics. Now he feels very differently: He believes that the combination of George W. Bush and the rise of "plutocratic" corporations requires direct political engagement, and that getting rid of Bush overrides any other personal or political concerns.

With characteristic unpredictability, Barlow is set to become the star of a new reality TV show, tentatively titled *Walking Time Bomb*. It will chronicle extensive attempts to improve the health of Barlow, the titular self-abusing 56-year-old man. It is currently scheduled to air on the Discovery Channel in January.

In March, Barlow met with me in the beautiful loft apartment of a friend of his in downtown Austin. A man of many unfixed addresses, he was there to speak at South by Southwest, the well-known annual music, movies, and technology conference. He wore a tight black T-shirt with an image of a skull with familiar mouse ears. We sat on the couches forming an L in a back corner and talked for a couple of hours about being a libertine, and libertarian, in physical, mental, and political flux, while still exhibiting "behavioral problems" in the eyes of the material world's authorities.

reason: You are becoming a reality TV star. What's that all about?

John Perry Barlow: I got talked into allowing my body to be the data set for a medical documentary/reality show being put together by the Discovery Channel and Canyon Ranch [a high-end spa and wellness center]. They wanted to showcase all the things you can do with virtual body imaging of physical systems, all the data you can assemble about what goes on in a body, and talk about the aging process and stopping the effects of long-term abuse on a middle-aged body.

I've been systematically mistreating myself for so long it was going to take something this heroic to turn things around. How often do you get well-funded financial entities to pay for your very expensive rehabilitation? They've been scanning me with everything you can imagine—electron beam scanners and CAT scanners and MRIs—and assembling all this information so I can see my own nervous system, my own cardiovascular system, in three dimensions. I can also examine the data being generated on a hormonal and endocrinological level, which creates a better sense of the soup that runs you and where levels should be in that soup and how you can alter them with diet and exercise. I make a really unlikely health nut, but I'm suddenly into it.

They'll be filming me for five months. The interventions are all behavioral, not surgical or biotechnical. It turns out you can do a hell of a lot simply by changing the way you eat and exercise. They are feeding me drugs, and drug-like foods, and food-like drugs, and hypervitamins. So now I'm not smoking, not drinking, going to the gym, not eating refined car-

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bohydrates. I'm much happier about the sight of leafy green vegetables than I used to be.

There are an awful lot of people like me because of the baby boom. Most of the people in my age cohort pretended to be 17 all along, to our detriment. We are not 17, and now it becomes demonstrably obvious we are not. The fact that we pretended we were has added wear and tear on our system.

reason: Does it make you have second thoughts about your lifestyle libertarianism?

Barlow: No. I'm still strongly opposed to antismoking laws, strongly opposed to any law that regulates personal behavior.

reason: Not from the legal standpoint, just personally: Should you not have treated yourself the way you have?

Barlow: I don't really feel that way. I'm glad that it appears to be the case that I can stop doing it now and reap the fruits of not having done it all along. It's another opportunity to have my cake and eat it too.

I was starting to see the bloody handprints on the wall. This just seemed like providential intervention. There are a lot of things I want to insert into the world in my lifetime, and I don't want to have a voice that's diminished by physical decrepitude.

I have a novelty-seeking gene as far as I can tell. Engaging in risky behavior is not something I'd ever be able to avoid. But it all depends on how you define your risk.

What really sticks out in my mind is an hour-and-a-half conversation I had with [*Hitchhiker's Guide to the Galaxy* author] Douglas Adams a couple of years ago. He was extolling the virtues of going to the gym every day, and how I ought do it, and he was so happy he was going to live to be 106. And he went to the gym the very next day and dropped dead of a massive heart attack. So I could go to the gym and it might kill me, as it did kill him. But I don't think Douglas was under sufficient medical supervision.

reason: How would you assess the accomplishments of EFF so far?

Barlow: Every existing power relation is up for renewal with cyberspace, and it was only natural there would be an awful lot of fracas where cyberspace met the physical world. EFF has been the primary mediator on that border. We have been very successful at protecting against excessive government encroachment into the virtual world.

Copyright and intellectual property are the most important issues now. If you don't have something that assures fair use, then you don't have a free society. If all ideas have to be bought, then you have an intellectually regressive system that will assure you have a highly knowledgeable elite and an ignorant mass.

reason: Is it your goal to annihilate intellectual property?

Barlow: Let me differentiate my own view from ex cathedra EFF. I personally think intellectual property is an oxymoron. Physical objects have a completely different natural economy than intellectual goods. It's a tricky thing to try to own something that remains in your possession even after you give it to many others.

reason: You've said it's better to think of intellectual work as a service you are paid for rather than an object of which you retain ownership.

Barlow: The way most people get paid for work done with their minds is on that basis. Lawyers, doctors, and architects don't work for royalties, and they're doing fine. Royalties are not how most writers or musicians make their living. Musicians by and large make a living with a relationship with an audience that is economically harnessed through performance and ticket sales.

"You can only go so far ignoring the opposing forces in the cultural war now arrayed against bohemian libertarians. A very authoritarian, assertive form of government has taken over. And it is doing so in the guise of libertarianism to a certain extent."

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Trying to own intellectual products and creating an economy of scarcity around them as we do with physical objects is very harmful to the development of culture and the ability to speak freely, and a very important principle not talked about much, which is the right to know. I think we have a right to know. It shouldn't be something we have to purchase.

That's me. EFF takes a somewhat more moderate view, but they are very concerned about fair use, and they don't believe present copyright laws, especially as defined by the 1998 Digital Millennium Copyright Act, are in the service of fair use at all. It was a very dumb piece of legislation, and if we could get rid of it, the world would be a better place.

reason: What are some things EFF is doing in the intellectual property field?

Barlow: We are involved in some ongoing litigation regarding file sharing, and we're starting to make some progress. We won *Grokster v. MGM* [which declared that the makers of software that facilitates potential copyright infringement are not liable for such infringement done by users]. But all that law is still in flux, and who knows how it will eventually shake out? The important principle is that there are noninfringing uses for peer-to-peer [P2P] systems. We are trying to do show the continual validity of the decision in the Betamax case [*Sony Corporation of America v. Universal City Studios*, a 1984 Supreme Court case that declared that neither home tapers of TV shows nor sellers of VCRs were infringing copyright]. When the VCR came into use, [Jack] Valenti [head of the Motion Picture Association of America] tried to stop it. But the Supreme Court ruled that there are significant noninfringing uses of a VCR that were so important to the First Amendment that Mr. Valenti's concerns had to take the backseat.

It was a damn good thing for Valenti that they did, because the movie industry is now heavily dependent on the very thing he was trying to stop. They seem to have forgotten that, and are back saying the only purpose of P2P networks is for illegal trading of owned goods. We claim part of the reason for P2P is for legal trading of what ought to be in public domain. And what *is* in public domain in many cases.

More important is the ability to quote from movies. The motion picture industry doesn't think you should be able to show anything from a movie unless you get their explicit permission. I think that creates a deadened culture so bound up in legal proceedings that it's never able to do anything creative that involves moving images.

reason: Do you want to change the fact that downloading a movie is illegal?

Barlow: EFF is well aware of the fact that it is not legal to download movies. Personally, I think if you're downloading movies noncommercially, sharing them with friends as you do when you let them borrow a DVD that you rented last night, that's perfectly fine.

I can't speak for EFF on that, but *I* would like to change it. The motion picture industry should realize in an information economy that when you've got a lot of free access to commercial goods it does not necessarily reduce their value, because there is a relationship between value and familiarity in informational goods. Despite the fact that there's a huge amount of motion picture piracy at the moment, theaters are doing better than ever.

I get pilloried for saying this—"Oh, Barlow thinks the Grateful Dead model ought to extend to the world"—but I don't see any reason why it can't. It worked for us and it has worked for everyone else I've ever seen try it. I think that what we stumbled into was a real deep—we didn't know it at the time—a

"The Transportation Security Administration is now routinely searching checked bags. They are *not* just looking for explosives. So our national security depends on whether or not they can get me for carrying marijuana on that airplane."

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deep quality of how an information economy works. We really did just stumble into it. We just decided it was morally shaky to toss people out of concerts just because they had tape recorders. It's bad for your karma to be mean to a Deadhead. And we thought we'd take a hit on it.

reason: You recently sent out an e-mail to many of your friends in which you announced that you were coming to think that mere "lifestyle libertarianism" was no longer enough—that the current political crisis now was so severe that actual gritty electoral political activism was a necessity and a duty. Why?

Barlow: I think you can only go so far ignoring the opposing forces in the cultural war now arrayed against bohemian libertarians. It's like in the '60s, when there were two distinct camps in the boho scene, one of which was Marxist and ideological and political and engaged and humorless to beat the band. And the other one was acid-laced and freewheeling and took the view that if you could change consciousness, politics would take care of itself. I was of that view to a large extent.

I've gone back and forth with politics. I've been a Republican county chairman. I was one of Dick Cheney's campaign managers when he first ran for Congress. But generally speaking, I felt to engage in the political process was to sully oneself to such a degree that whatever came out wasn't worth the trouble put in. I thought it was better to focus on changing yourself and people around you, to not question authority so much as bypass it whenever possible.

But by virtue of our abdication, a very authoritarian, assertive form of government has taken over. And oddly enough, it is doing so in the guise of libertarianism to a certain extent. Most of the people in the think tanks behind the Bush administration's current policies are libertarians, or certainly free marketeers. We've got two distinct strains of libertarianism, and the hippie-mystic strain is not engaging in politics, and the Ayn Rand strain is basically dismantling government in a way that is giving complete open field running to multinational corporatism.

reason: What are some of the specific actions or policies of the Bush administration that alarm you more than Clinton did, or Reagan or the first Bush?

Barlow: An unwillingness to engage in any kind of mitigation of the free market. The one thing that I know government is good for is countervailing against monopoly. It's not great at that either, but it's the only force I know that is fairly reliable. But if you've got a truly free market you only have a free market for a while before it becomes completely regulated by those aspects of it that have employed power laws to gain a complete monopoly.

reason: You've said that Microsoft is in a position where it is achieving control over our minds. Could you elaborate?

Barlow: Any time you engage with information, the reality that you extract from that information is shaped by the tools that deliver it. Microsoft's information presentation is such a monoculture that it edits out a lot of other realities. So you have a new kind of monopoly that affects the way people think in ways that are invisible to them. It's a very dangerous form of monopoly, especially now that they are talking about the "trusted computing" model, where it will be very difficult for you to save and then pass on documents on systems without identifying yourself.

That system is supposed to be designed to help control digital rights management. By its nature it will be great for *political* rights management, because it's an enormously penetrative surveillance tool, and it makes it hard to do anything anonymously involving a computer. Here is a monopoly in essence, the Wintel monopoly—Windows/Intel—which has enormous global power and which no government is willing to stand up to, at least effectively, so far.

The multinationals have reached the point where they are essentially replacing the nation-state. I look at a multinational as an organism. It is not a human being and doesn't have any characteristics of a human being. It is as much unlike a human being as a coral reef is unlike a coral polyp or an anthill unlike an ant.

It is an extremely advanced piece of evolutionary design that is capable of having its way in the world and competing with human beings for the world's resources. From a multinational's standpoint, the best thing that can happen is the best thing that can happen *right now*. They have to deliver maximum shareholder value today, next quarter, which means that they don't worry about whether there are going to be resources for them to exploit in 10 years.

We need them. We have a deeply symbiotic relationship with large corporations. I wouldn't want to eliminate them, because they are the engines of our economic well being at the moment. But we need

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something—and I think it's governmental—to reregulate the market and make it free, because the multinationals have taken it away.

reason: What is it you are recommending bohemian libertarians do right now?

Barlow: We have to re-engage in the political process we have. Democracy actually works. You could make the argument that it's working too well in America—people are really getting exactly the government that they want. That is to say, the people who bother to engage themselves in the really tedious work of being a political activist—having meetings in church basements and putting signs on people's lawns.

I have grave misgivings about John Kerry, but I certainly don't have misgivings about Kerry that equal the terror I have about another four years of Bush. What he's done to aspects of the Constitution that are there to assure individual rights is breathtakingly bad.

So I'm becoming an active Democrat. I wasn't one until just a few months ago, because I felt there was more room for libertarian thought inside the Republican Party. I never found the Libertarian Party was a credible political institution. It holds a pure line, and I'm glad there's somebody out there defining that point of view, but in terms of actually having power, making a difference....There are libertarian wings in both the Democratic and Republican parties, and in the past I found it most effective to be inside the Republican Party acting as a libertarian. But I've switched.

One of the things going on in my mind when I wrote that note [announcing the decision to embrace political activism over lifestyle libertarianism] was that I'd just been busted for having a really trivial amount of marijuana in a checked bag under a PATRIOT Act search. I was arrested, hauled off in irons, an ugly experience. At San Francisco airport, for, like, three joints' worth of dope.

Before the plane took off, Delta employees came on and said, Mr. Barlow, you have to step off the plane, and bring your personal effects. Then San Francisco cops arrested me. I spent the day in Redwood City in jail. It was a chilling experience. It's happening, and happening a lot. The Transportation Security Administration is now routinely searching checked bags. They are *not* just looking for explosives. I've taken the government on, subpoenaing their training procedures and search requirements to see whether or not any attention is paid to the Fourth Amendment in these searches.

The Constitution doesn't say anything about national security. The Fourth Amendment is the Fourth Amendment, and they're gonna have to show me that it isn't. Right now they are refusing to answer subpoenas. I'm trying to suppress evidence based on it being an improper search.

Most people in this situation just say whatever, and plead out, but I'm willing to put myself on the line for it. The worst that can happen is they'll be especially nasty if they convict me. It's a misdemeanor anyway. But to just plead out would be abdicating my citizen's responsibility to defend the Constitution. You have to fight for your freedom individually and not say, "Oh well, it's not worth the trouble."

I'm already being a lot pricklier than they expected. They asked for a continuation at the last hearing because they said that the Department of Homeland Security had been unable to come up with a set of guidelines regarding the release of the subpoenaed materials for national security reasons. So our national security depends on whether or not they can get me for carrying marijuana on that airplane.

"TV in America created the most coherent reality distortion field that I've ever seen. People who vote watch TV, and they are hallucinating like a sonofabitch. Basically, what we have in this country is government by hallucinating mob."

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The ideal thing would be to have charges dismissed with prejudice, and then I sue the shit out of them. I'm merely defending myself right now.

reason: Would this situation be any different if John Kerry were president?

Barlow: It would certainly be better. I don't think anyone is as good as he ought to be.

I had a conversation with Kerry. It was pretty disheartening. I asked how he felt about civil liberties. He said, "I'm for 'em!" That's great, but how do you feel about Section 215 of the Patriot Act? He said, "What's that?" I said, it basically says any privately generated database is available for public scrutiny with an administrative subpoena. He says, "It says that?" I say, "You voted for it!"

He says, "Well, it was a long bill...." Then he went off on this riff about how we had to take some serious measures to stop this terrorist threat, etc. I said, "I fail to see how terrorists present anything like as big a threat to liberty in America as you guys do by passing this kind of legislation. The founding principles of this republic are not being defended where they need to be defended."

He seemed somewhat receptive, but he's a very political guy. Even among his kind. I think he's been in the U.S. Senate long enough to have his backbone dissolved. This was at a small dinner of mostly wealthy people giving him money. But I think Kerry will be somewhat better than Bush, if for no other reason than he is not on the same side in the culture war. Kerry's a Deadhead. He inhaled. He said he didn't like it that much, but he certainly is not out there ready to impose steeper mandatory sentences on possession of drugs.

reason: But is he ready to eliminate the ones we have?

Barlow: I think so. He's not about to discuss it publicly. Right now he's trying to define himself as only slightly to the left of George Bush.

Kerry isn't perfect, but the alternative is just completely....I hate to keep carping on this, but within the libertarian movement we're gonna have to actually sit down and talk about where we stand on the two variants, because one of them is actually part of the problem at this point. I used to think of myself as both kinds of libertarian, but I have pretty well parted company with [D.C.-based leader of libertarian-leaning conservatives] Grover Norquist at this point. I don't see anything particularly free about a plutocracy.

reason: I've been rereading some of your early '90s writings about the digital future, and you sounded a lot more optimistic then, with a much more "nothing can stop us now" attitude.

Barlow: We all get older and smarter.

reason: Still, it seems to me you were mostly right. The Internet promise came true. We do have access to more news, viewpoints, opinions, cultural products than could have been imagined 20 years ago. Doesn't that make worrying about corporate media consolidation a rather antediluvian fear?

Barlow: You now have two distinct ways of gathering information beyond what you yourself can experience. One of them is less a medium than an environment—the Internet—with a huge multiplicity of points of view, lots of different ways to find out what's going on in the world. Lots of people are tuned to that, and a million points of view have bloomed. It creates a cacophony of viewpoints that doesn't have any political coherence at all, a beautiful melee, but it doesn't have the capacity to create large blocs of belief.

The other medium, TV, has a much smaller share of viewers than at any time in the past, but those viewers get all their information there. They get turned into a very uniform belief block. TV in America created the most coherent reality distortion field that I've ever seen. Therein is the problem: People who vote watch TV, and they are hallucinating like a sonofabitch. Basically, what we have in this country is government by hallucinating mob.

It's a perfect set of circumstances to give us the time Yeats foretold, with the best having lost all conviction and the worst full of passionate intensity. In my heart of hearts I'm with you. I'm an optimist. In order to be libertarian, you have to be an optimist. You have to have a benign view of human nature, to believe that human beings left to their own devices are basically good. But I'm not so sure about human institutions, and I think the real point of argument here is whether or not large corporations are human institutions or some other entity we need to be thinking about curtailing. Most libertarians are worried about government but not worried about business. I think we need to be worrying about business in exactly the same way we are worrying about government. ◻

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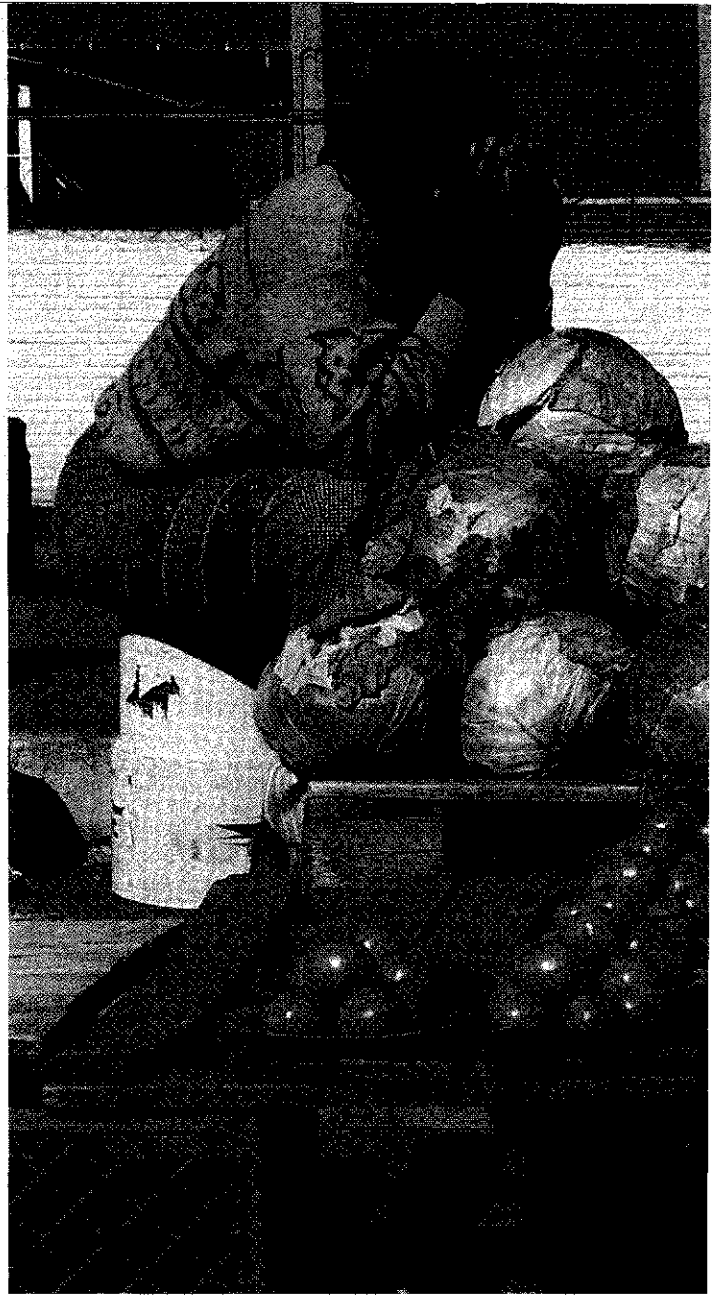
Try, Beloved Country

Rumors of South Africa's decline are greatly exaggerated.

John Blundell



IF YOU BELIEVE what you read and hear about South Africa, you'll think the country is in horrible shape, with 42 percent unemployment, runaway crime, and 5 million people dying of AIDS. After nearly a decade of democracy, sub-Saharan Africa's crown jewel is, many pessimists warn, even more damaged than it was under the apartheid system.

But if you believe your eyes more than the press, and conversations with individual South Africans more than misleading statistics, a different picture emerges. Having spent time in South Africa in the mid-1980s and mid-1990s, I was anxious to return and see for myself just how much truth there was to these disturbing and depressing reports.

Last August I spent 10 days poking around the greater Johannesburg area, from the ravaged Central Business District to the squatter camps, from the townships to the wealthy suburbs. I talked to taxi drivers, scholars, businessmen, squatters, politicians, reporters, lobbyists, hawkers, doormen, a chief, and an ex-president. The society I observed was far from doomed. Rather, it was dynamic and growing, with healthy political debate, teeming shops and malls, and a vibrant private sector. South Africa, for all its very real troubles, is a basically free country that's improving by the day.

Rise of the Vendors

"What is the big difference between now and 10, 20 years ago?" I asked Lawrence Mavundla, president of the African Council of Hawkers and Informal Business (ACHIB), a nongovernmental advocacy group that writes model street commerce laws designed to influence legislation in South African cities. We were sitting in the office above his tire service business in the Central Business District of Johannesburg, under portraits of past President Nelson Mandela and current President Thabo Mbeki, who took office in June 1999 and was re-elected last April. Across the road loomed the notorious headquarters of the South African police force, out of whose 10th-story windows many unfortunates "slipped" during the apartheid years.

Mavundla smiled widely. "Now we can talk openly without fear of repercussions," he said. "The difficulty is that the officials who enjoyed enforcing apartheid are still there. These officials do not buy fruits on Friday because they know they are going to raid the hawkers."

ACHIB was founded 17 years ago by 250 street vendors as a reaction to police brutality. Today it has 110,000 members; many have built big businesses; others have gone into politics. President Mbeki's roots are firmly planted in this sector; his mother still runs a *spaza* shop (a small informal supermarket) where the president worked as a young boy.

Mavundla himself was fired from his position as shop steward at the East Driefontein gold mining company in 1985 after organizing a strike to protest the poor treatment

Street vendors, all photos by Stewart Clark.

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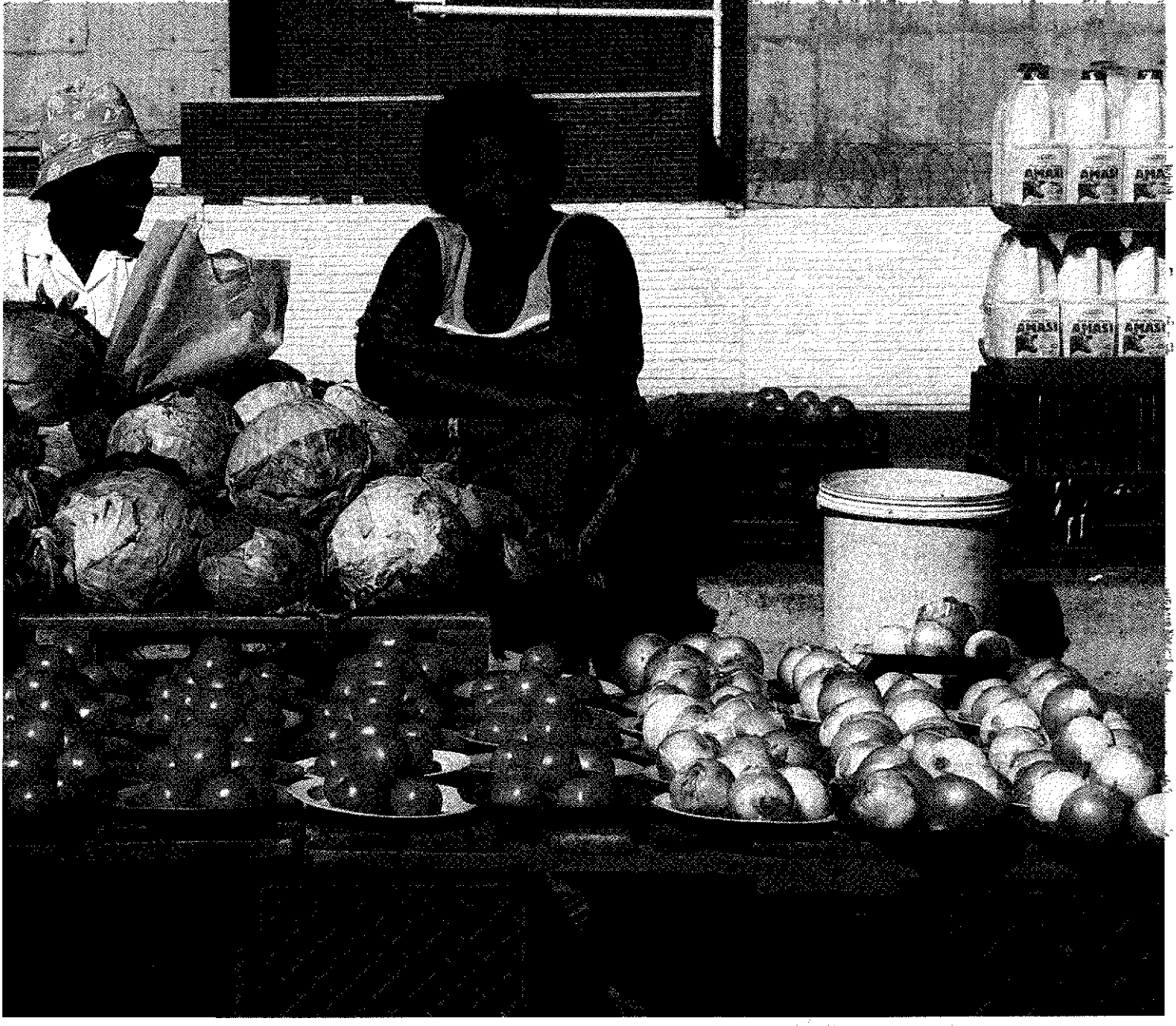

of his fellow black miners. "The black mine workers were being asked to eat the insides of the cow, while the whites were getting all the meat," he said. "That was it. Whites could eat whatever they wanted, but management was deciding for us." He left his job with a mere 400 ($60) rand in his pocket. Not much, but enough to start him off selling cosmetics on streets and trains.

Today this former hawker has his fingers in several enterprises. One of them, his tire business in the Central Business District, sells mainly Goodyear products to a customer base that is now 90 percent black. "I just today employed my first white guy on wheel alignment," Mavundla said, laughing out loud at the irony of his black customers' demanding a white man to perform a technically complicated job. But, he said, "the customer is king!"

Mavundla is confident about his company's future. "Even if my price is higher than a white company's," he said, "I'll get the government contract." How does this favoritism square with his free market rhetoric? Mavundla's justification: "Certain changes must happen, and we need time. White businesses have had 10 years to change, and they haven't. However, in another decade things will have changed so much that white and black will be together in owning businesses, and there will be no such thing as a 'white' business or a 'black' business."

Stark Inequality

This persistent divide between black and white is, of course, one of apartheid's many terrible legacies. The racial tension manifests itself in many ways, some subtle, others not.

South Africa's complex, one-of-a-kind history has resulted in a country with 11 official languages and a racial

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mix of 75 percent black, 13 percent white, 9 percent "colored" (of mixed white and nonwhite descent), and 3 percent Indian/Asian. Its Gini coefficient—a 0-to-1 index that measures the distribution of wealth, with 0 being absolute equality—is an extremely disparate 0.62, meaning that the poorest 20 percent get 3 percent of the income and the richest 20 percent get 63 percent. Europe, by comparison, is just below 0.30, and even the "grossly" capitalist U.S clocks in at only 0.35.

You can see these numbers come to life just by looking around Johannesburg. It's only a 45-minute drive from the Gucci outlet in Sandton Square ("the only Gucci shop in Africa") to the squatter settlement behind Chris Hani Baragwanath Hospital in Soweto. But such makeshift camps are small, and you have to search for them, unlike in the rest of Africa and many parts of Latin America, where they are ubiquitous. According to the South African Housing Ministry, about 5 million South Africans (out of a population of 45 million or so) live in the 1,066 informal settlements spread across the country's nine provinces.

An informal settlement is one that does not conform to government town planning rules. Settlements develop spontaneously, generally on land owned by the central, provincial, or local government in urban areas, though they occasionally develop on private land as well. In the rural areas the informal settlements are generally on traditional community land currently held by the state but soon to be transferred to the communities under recently enacted legislation. Initially, no services are provided, but in time the government adds roads, electricity, and water. There is great political pressure on the current government to upgrade services in all these areas. A certain amount of tension exists between formal townships and adjacent informal settlements because the latter are seen to undermine the value of the former. This happens regardless of the race of the formal township dwellers. Many of these settlements are the consequence of migration from rural to urban areas.

A multitude of cultural influences exists side by side in South Africa. At a supermarket in the Parkmore suburb (where our car was thoughtfully observed from a 30-foot-high iron watchtower by a private, probably armed security guard), each product is available in a mix of local, British, and American brands (except for the candy, which for some reason was predominantly British).

On a Sunday morning walk around an outdoor arts and crafts fair in a local suburban park, I was struck first by how many large, loud, and unruly dogs were being walked, second by the fast food corner: Just next to the stall selling *biltong* (a local dried meat product similar to jerky) was a donut booth (U.S.) and a sausage roll stand (U.K.) where the meat was encased in pastry. (If you don't already enjoy them, it's best not to ask.)

On the first day of my return to South Africa following an eight-year absence, from the shadows of the monster-sized police station—it would dwarf London's New Scotland Yard—we drove through the declining Central Business District. "Johannesburg picked up her skirts and moved

Yes, there is crime, unemployment, and AIDS. But with a black majority that is stunning in its patience, understanding, and willingness to find a way, South Africa will not only survive but thrive.

Street vendors

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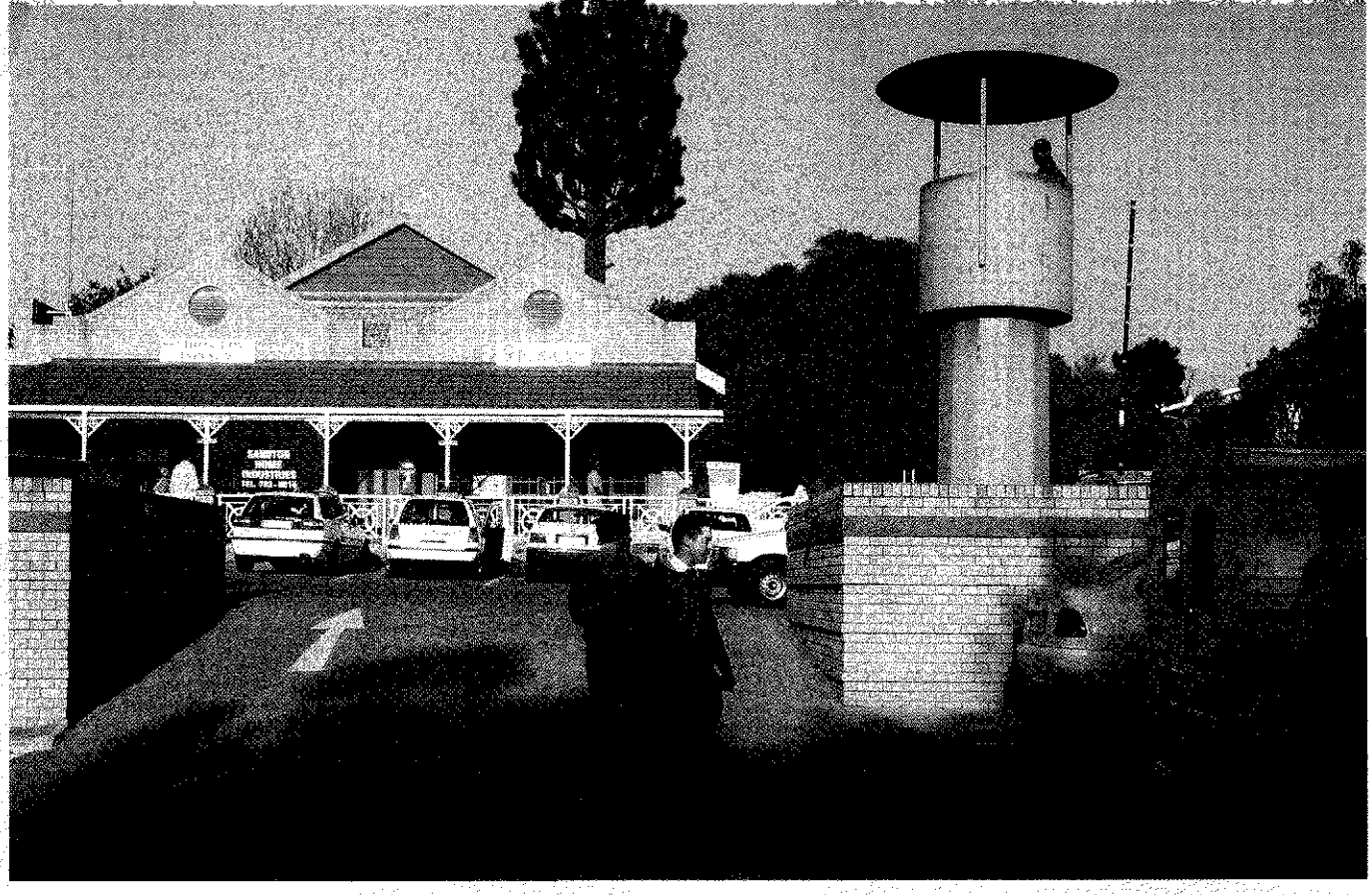
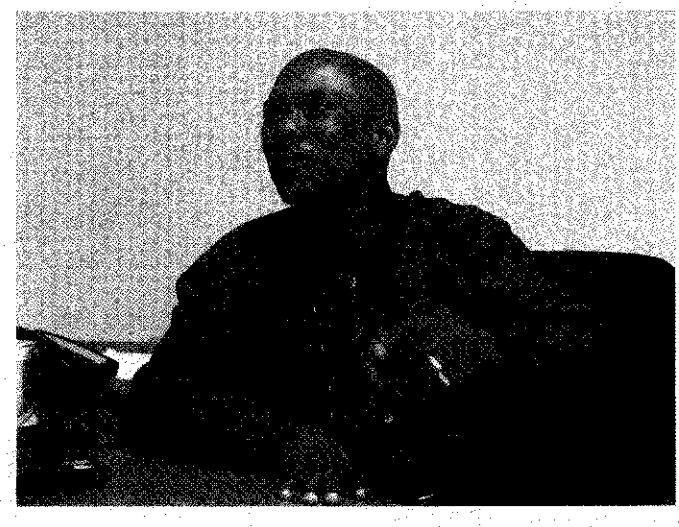


Parkmore shopping area with guard tower; Mthunzai Mdwaba



to Sandton," explained Theresa Griessel, my Afrikaans-born friend and volunteer guide for that day. Sandton, in the north of the city, has been transformed from sleepy agricultural land to a busy new cluster that is home to many of South Africa's top companies, such as Investec and Old Mutual, as well as the Johannesburg Securities Exchange.

Our destination was the high-tech Rivonia Park, which looks like something out of Florida more than out of Africa. We were greeted by 36-year-old birthday boy Mthunzai Mdwaba. Originally a lawyer, today Mdwaba heads Sourceman Technology Solutions, whose client list features many of the giants of the computer industry: Cisco, Microsoft, Oracle, Open Source, Citrix, CompTIA. Sourceman also has a division that provides computer training for 1,000 youngsters.

"You provide this education for profit?" I asked in surprise. "Yes," he replied, explaining that, compared to any state agency, "we get better placement percentages!"

Now president of the historically white Information Technology Association, Mdwaba said his goal for the country is to create "an economic rainbow nation." "The dominant theme of public life," he explained, "is transformation and black economic empowerment. Unlike [Robert] Mugabe [in Zimbabwe], we have made some good strides in returning land to the people."

Driving Lessons

Soweto, which stands for "Southwest Township," is the hugely populous black township outside Johannesburg where many of the city's workers live. Driving through the neighborhoods there, I was struck by how utterly different the homes looked. On previous visits, in 1984–85 and 1995, I had seen nothing but overgrown matchboxes in identical military-style lines. Today it's hard to find an unimproved house "where the steel government door has not been replaced by a nice wooden one," as one white South African friend put it. "Once they own it, they go home with a tin of paint, not a bottle of brandy," he added. It is a winning advertisement for the benefits of private property and the pride of home ownership.

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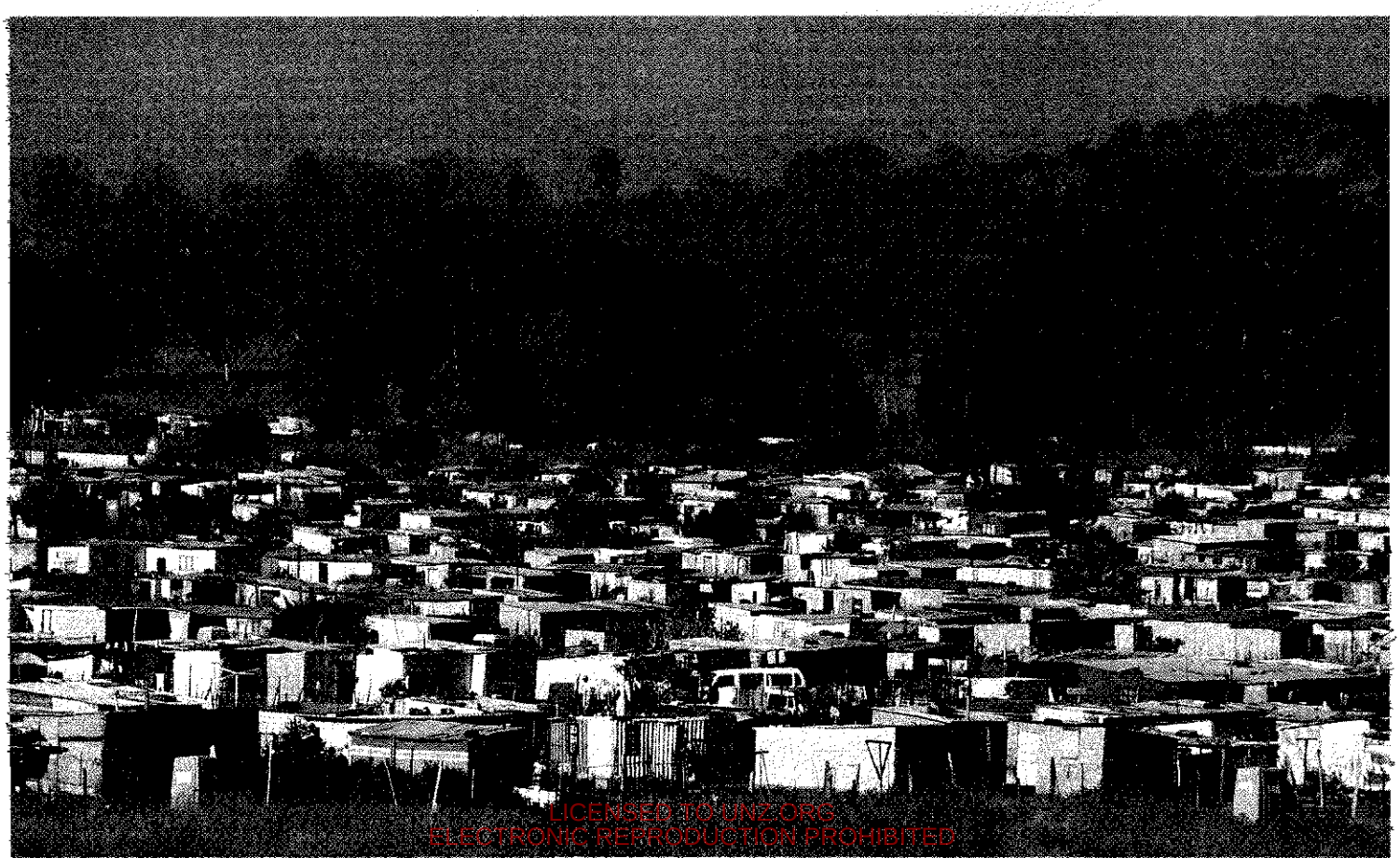

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But much still remains to be done to encourage private property in South Africa. While whites have always been free to dispose of their land as they see fit, whether by sale, donation, or inheritance, blacks were not free to do so under apartheid. Improvements, while noticeable, are slow. For instance, those who squat on tribal land under "permission to occupy" rules are still subject to severe restrictions on their ability to transfer their rights to other people.

If land was acquired with state assistance, the right to sell is often curtailed (for fear that people will sell the land and squander the cash). Lack of access to financing is another constraint, as banks are very reluctant to get involved in the low-income housing market. And the bureaucracy has moved at a glacial pace: In 1992 the government announced that houses would be transferred to existing occupants, but the first title deeds were not issued until a full 10 years later, and 750,000 South Africans are still waiting.

More is wrong with the South African economy than lack of property rights. Despite shopping malls such as Sandton City Centre and Sandton Square, which give anything I've seen in Europe or North America a run for its money, evidence abounds that this is still a developing nation.

As I was told by Michael MacDonald, the white manager of Norman's Toyota car dealership, the country's dearth of public transit means an estimated 30 percent to 50 percent of the average net wages of blacks are spent paying for work commutes, which frequently take several hours a day. I was so staggered by this estimate that I asked about it wherever I went. Numerous other people confirmed the sad fact.

But while that fact makes things difficult, the transportation problems haven't destroyed initiative in South Africa. Nearly everywhere you drive—you do *not* walk because it just isn't safe, and there is little public transportation—there are roadside traders who rival in energy and inventiveness the finest hawkers anywhere in the world.

Leaving one private housing area, I was struck by the sight of two men standing in the middle of the road by the traffic lights (or "robots," as South Africans say) holding garbage bags. "Better than begging," explained Neil Emerick, a think tank analyst and my chauffeur at that moment. "When we stop it's a good time to de-trash the car and give them a couple of rand."

At another light a young man offered us "lubricated" condoms, the box clearly indicating these were a donation to the Republic of South Africa (RSA) from a First World charity. Apparently they had been taken from a clinic, and he was now "giving" them away. If we also felt like "giving" him some dollars, he wouldn't say no. But he wasn't selling them, exactly—just making sure they were in circulation rather than languishing in the clinic's storeroom.

The entrepreneurial-minded are pouring into South Africa. My taxi driver was from Mozambique. My hotel doorman was from Zimbabwe. Another street trader was from Senegal. Fully half of the economically active black people I talked to were not from South Africa at all. Far from indicating a lack of energy on the part of South Africans, this instead indicates that there is so much room for entrepreneurial activity in South Africa that the country is providing room for all, or at least a great many, comers.

The most memorable entrepreneur I met was Patrick Makone. Tall, fit, young, and handsome, he was selling geckos and other animals made out of wire on the street. "Ah, inexpensive gifts," I thought as he approached my table and asked permission before squatting down to show them to me. They ranged in price from 20 rand ($3) to 150 ($22.50). I bought a chameleon for my 12-year-old cousin Candice and a lizard for my 14-year-old son, James. Makone's English was superb. In exchange for a further payment, I asked for his story.

He was from Zimbabwe, where he made the animals. Once he'd made as many as he could carry, he would buy a city-to-city return bus ticket from Harare to Johannesburg, costing $37.50, with a further duty of $18 at the border.

"Duty, or bribe?" I asked.

"Duty!" he said emphatically.

Once in Johannesburg, or rather its prosperous nodes, Makone walks the streets until all his products are sold, then returns to Harare to start the cycle over again. Things were very bad in Zimbabwe, he said. Bread had gone up in price fourfold in just two months. Six days later, I heard from a refugee restaurateur that it was now up eightfold.

As Makone moved on, my lunch companion, Theresa, an employment and training consultant who does contract work all over Africa, offered the following observation: "Even though we are a basket case, we are still the economic destination of choice for the rest of Africa."

When Numbers Get Serious

South Africa's progress isn't only in big matters like economic growth and entrepreneurship. It's also reasserting itself as a major world power in international sports such as cricket and rugby. For 30 years, South African athletes were not permitted to compete internationally, meaning generations of athletes were denied the opportunity to reach the pinnacle of their profession.

Sandton Square, now Nelson Mandela Square; Soweto squatter settlement

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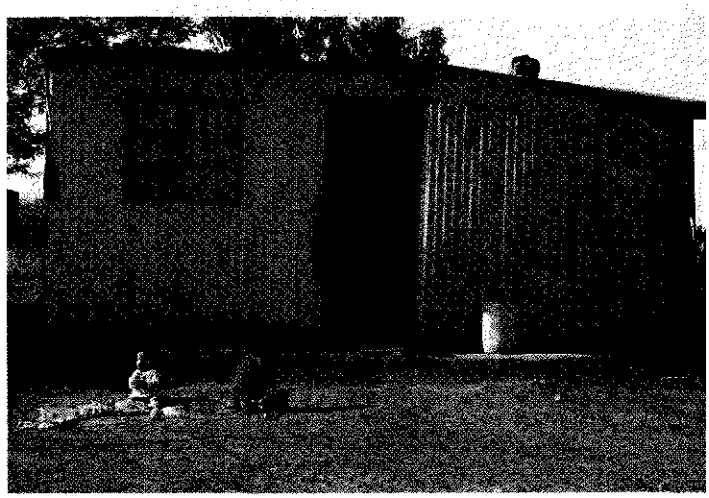
Unlike in the U.S., where being blocked from international competition would have only a marginal effect on the careers of most professional athletes, South African sportsmen suffered greatly from their exclusion. The lifting of both the sporting bans ("We just beat England at cricket!") and commercial sanctions ("I can buy a Mac now!") has been a liberating experience for a country with global ambitions. South Africa has embraced its new freedoms and emerged from its isolation with an enthusiasm that is a joy to behold.

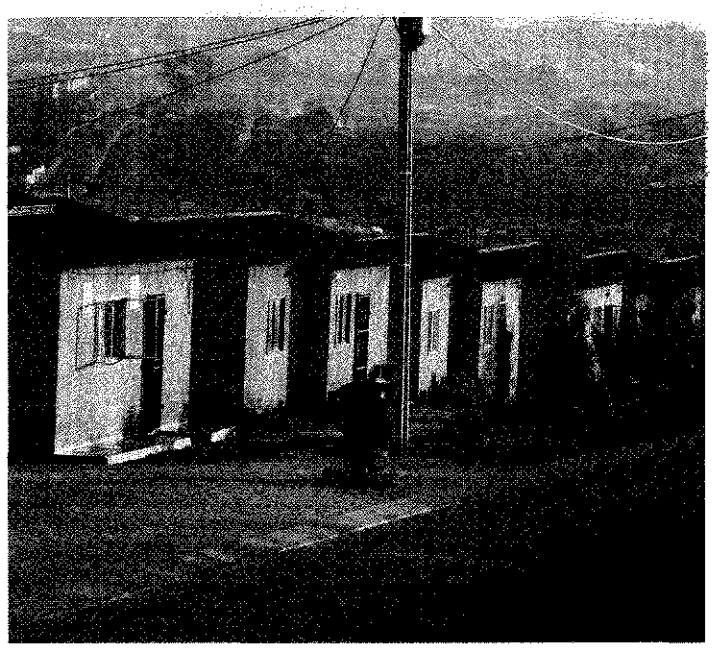
Yet the local newspapers were overwhelmingly negative: Everyone was either dead, dying, infected, unemployed, or committing a crime. "If you are not infected [with AIDS] then you are affected," goes the popular saying. Yet everywhere I looked—and yes, I saw real problems, particularly in Soweto—I found reason to be suspicious of the official and widely reported figures of 42 percent unemployment and 5 million people about to die of AIDS as of August 2003.

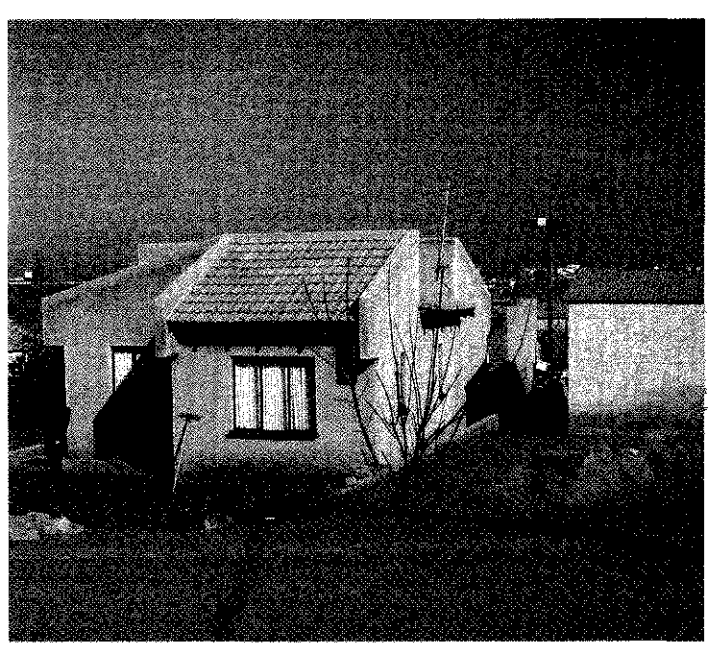
First, one must distinguish between what Statistics South Africa, the government statistical agency, calls the "expanded definition" figure of 41.8 percent unemployment (total jobless among people between the ages of 15 and 65), and the "strict definition" figure of 30.5 percent (those who are actively and unsuccessfully seeking official employment). While the expanded definition may be an internationally accepted way of measuring unemployment, it does not take into account all those South Africans working in the "informal" sector. From what I saw, a significant portion of that 42 percent is already working in the thriving underground economy, running a staggering number of black-market businesses.

The official unemployment numbers "are definitely not counting on the fact that there are millions at work in the informal businesses you see all over the place," said Eustace Davie of the Free Market Foundation, an independent South African think tank founded in 1975. One estimate puts the number of such businesses at more than 3 million. And beyond the specific enterprises, plenty of individuals are employed informally. For instance, private security personnel now outnumber police by four to one, and many security guards in the informal sector would not be picked up in the government's employment figures because they are not officially employed by anyone.

Yes, there are young men on Soweto street corners doing apparently little and perhaps nothing at all. But the official figure is hard to believe. "It does not add up," said attorney Leon Louw, the executive director of the Law Review Project, based in the Johannesburg suburb of Sand-







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ton. "Sales of cell phones, cars, and building materials are booming. There's a phone mast in even the poorest, most isolated village. If you go out on the ground, you simply cannot find the evidence to back up the scare stories. We just do not witness the scale of problems reported in the press. Subsistence agriculture is declining, but this is to be welcomed as it means people have found more productive things to do."

What of the HIV/AIDS epidemic? This is obviously a real and serious problem, but there are reasons to be skeptical of the officially promulgated number of 5 million infected. According to the Free Market Foundation's Davie, early extrapolations of the number of infected were based on tests that included a large number of pregnant women. There is a much greater likelihood of getting a false positive when the HIV test is conducted on a pregnant woman, so those early extrapolations were suspect.

While it is still impossible to give truly reliable estimates of AIDS in Africa in general and South Africa in particular, an increasing number of researchers are questioning the dire predictions. Horrific AIDS estimates, based on elaborate computer models, are being flatly refuted by actual on-the-ground testing in prisons, schools, and businesses in South Africa. For example, one widely cited computer-generated estimate projected that HIV infection was rampant at South African colleges, with one in four undergraduates expected to die within 10 years. But according to a report in the London *Spectator*, a physical test of 1,188 students at Rand Afrikaans University, which the computer had pegged with a 9.5 percent infection rate, revealed that the actual number was 1.1 percent.

Criminals and Regulators

One indomitable optimist I met was Michael Katz, introduced to me by a mutual pal in London as "South Africa's top lawyer." "When you were here in 1984, the crash was inevitable," he said forcefully. "By 1987 we were doomed....Then we had the miracle of reconciliation, and then the second miracle of President Mandela and nation building." Two miracles in one sentence. The word is used here more often than in the Vatican, I thought. "It's night-and-day better," he continued. "Access to water, electricity, and sanitation has just soared."

And the South African constitution, Katz said, is "one of the best in the world." Before ratification in 1996, "Parliament could pass any law it wanted untested against principle," he said. "Now constitutional supremacy has replaced parliamentary supremacy. We have a bill of rights. Laws can be struck down as not conforming to the constitution....We have entrenched individual rights as opposed to group rights."

But crime continues to be a serious problem. Tom Bouwer, of a group called Business Against Crime, reported that "post-1994, crime exploded, but maybe there was more transparent reporting. Also, all societies that are going through change are targeted by syndicates. And hungry people are easy recruits for crime syndicates."

The Law Review Project's Leon Louw blamed the police. "They go for soft criminals and victimless crimes," he complained. "They go for hawkers, not real criminals."

Wherever the blame might belong, private initiatives aimed at increasing safety and discouraging crime are quite visible. You cannot spend five minutes in South Africa without noticing how careful and cautious everyone is—the locked car doors, the barred windows, the watchtowers, the 10-foot walls. Some neighborhoods block off all but one entrance road with illegal private "booms," or long prefabricated metal barriers that close the rest of the streets off to vehicular traffic. The chokepoint is patrolled 24 hours a day by armed guards, resulting in lower local crime but a sharp spike in vehicle traffic.

Getting inside a South African shopping mall is a bit

> On previous visits, I had seen nothing but overgrown matchboxes in identical military-style lines. Today it's hard to find an unimproved house "where the steel government door has not been replaced by a nice wooden one."

Squatter settlement house, matchbox houses, privatized house

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like hopping on a plane in post-9/11 America. Of course, firearms cannot be taken into the malls, so one sees advertising for gun safes at the main entrances. There are closed-circuit television cameras, metal detectors, private guards, "24 Hour Armed Response" signs, and a pat down at the doors.

William Midgley, another prominent South African attorney, described the crime spike as a function of dynamic change. As noted, the commercial activity of the Central Business District has moved to the nodes or suburbs. Out there people once had big three-acre plots on quiet roads, Midgley noted; now the streets are clogged with traffic and business, and the land is "not secure, not maintainable." The result is a huge "densification of the use of land" involving "massive ongoing changes of use." It's all very restless, very like America...before it fell in love with development planning and containing "urban sprawl."

There is no real planning or zoning control. Big projects with expensive lawyers get permits, but for smaller ones public oversight has collapsed. Streets of bungalows have become offices. You do whatever you want. One of my hosts took me to his nice home and showed me a neighbor who was adding a new wing to his home with no permit whatsoever. The local bureaucrats "have no idea where the zoning plans are," my host explained.

"Are you freer today?" I asked John Kane-Berman, a key opinion leader and head of the South African Institute of Race Relations, a public policy organization. "In a broad political sense, yes," he replied. "But not in terms of moving around and personal safety. However, a P.C. tyranny has replaced apartheid. As an employer of 40 people, I face many new regulatory demands. Even under apartheid, I never had to break down my staff by race. Today as soon as my staff goes over 50 in total, the sex/race/disability plans I have to put in place involve forms as fat as the phone book."

Firms with more than 50 employees are required to hew to certain quotas based on race, gender, and physical disability. The "employment equity" rules have had the unsurprising effect of discouraging companies from expanding beyond 49 employees; instead they rely on subcontracting. The government has reacted by reclassifying major subcontractors as employees.

In addition, there are billions of rands' worth of unclaimed, unspent "training" levies. These levies, paid by all firms, go into a general coffer administered by the state. Those firms that provide training are then allowed to claim funds from the pot. Firms pay the levies but simply cannot be bothered to reclaim them, even when they provide a great deal of training, because the paperwork involved is so vast.

These new regulations place huge burdens on the types of business the government should be encouraging. "We're just cutting and pasting wholesale large volumes of legislation from the U.K., Germany, Canada, and Australia," said Neil Emerick of the Free Market Foundation. Furthermore, Kane-Berman continued, while the governing African National Congress is focused on building stable black middle and upper classes, unemployment has doubled since 1994 because of strict labor market laws, racial regulations, and the reintroduction of foreign competition.

Transforming Transformation

"Getting it right" was the theme of a think-in with President Mbeki on my last evening in South Africa, at the Little Brenthurst home of the Oppenheimer diamond dynasty. (That's *little* as in Robin Hood's Little John. British understatement transplanted.)

Nicky (a third generation Oppenheimer) and son Jonathan (fourth generation) addressed the two-hour gathering of the South African elite: businessmen, academics, political leaders, and the like. A year earlier, the African National Congress had made a well-intentioned but economically disastrous move to introduce a Mining Charter, which mandated that hiring in South Africa's mines be based on race, regardless of actual ability to do the job. Billions of rands exited the country, and now the Oppenheimers, at the prompting of an Mbeki emissary, were considering the question, "How does one transform an economy like ours?" By *transform*, South Africans mean, among other things, changing the country's economic profile from mostly whites in boardrooms and executive suites to 80 percent or more blacks in the upper echelons, in order to reflect the wider population.

The Oppenheimers told this gathering that transformation should be portrayed as an opportunity for the established economic powers rather than a threat to them. They said the goal is a bigger economic pie over all, with a bigger portion going to blacks.

The Oppenheimers' proposed carrot to entice companies to engage in transformation is a reduced corporate tax rate: Those that make a middling attempt to change their demographic profile would stay at the current rate, while those that failed totally would face tax penalties. The view of many in the room was that it's better to incentivize than regulate.

A lone pure libertarian voice called out from the audience: "Why can't we just let growth *in and of itself* transform the opportunities of the great majority of

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South Africans?" It was Brian Kantor, a former professor of economics at the University of Cape Town, who works for Investec, an international specialist banking group that started in South Africa in 1974 and now operates in 11 countries.

"Unemployment will doom us to a downward spiral—we just don't have the time," came the answer.

Transformation has its critics. Nobody I met defended the current distribution of income. But there are many who claim that reform has helped only a handful of elite blacks while neglecting the masses. "Every white company is trying to buy a black one," the Free Market Foundation's Emerick said. That creates instant "transformation," of a sort. "There are a small group of blacks on many boards, usually the same people!"

There are the optimists of all races who have elected to stay on and tough it out. But there are still many pessimists. A great debate is raging over how to stop newly trained white doctors and dentists from skedaddling to Australia and the U.K. upon graduation without paying back one rand to the government that provided their education. "Those of us who are left are united on transforming the economy," President Mbeki told the Oppenheimer group.

What's really needed are the sort of popular Thatcherite measures that will bypass the tiny in-crowd and truly empower the tens of millions of poor people. After Britain's 1980 reforms, the number of people owning shares catapulted from 6 percent to 30 percent; South Africa, too, needs to open up ownership to the masses. The Law Review Project's Louw is very clear: "The fundamentals are in place. Apart from thousands of new statutes we call 'petty' regulation, the rhetoric is right and so is the policy. We have a good constitution that protects the people, and we have a surprisingly good Constitutional Court that upholds the rule of law. Other than the nationalization of mineral rights, capitalism is rampant and socialism completely defeated."

His colleague Eustace Davie added: "While we are subject to crime, we are all freer from government. After 20 years of no growth, and even negative growth prior to 1994, we are now going up." The annual growth rate in South Africa is estimated at 3 percent.

In the end I went with my eyes, and my training as an economist, in judging South Africa's prospects. Yes, there is crime, unemployment, and AIDS. But from my perspective on the street, in the heart of it, I don't believe the problems are as big as the reports make them out to be, or as insurmountable as the naysayers would have them seem. With a black majority that is stunning in its patience, understanding, and willingness to find a way, South Africa will not only survive but thrive. ■

John Blundell (jblundell@iea.org.uk) is director general of the Institute of Economic Affairs in London.

Wealthy suburbs

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"REAL" ART
OR "MR GRUMPY GOES TO AN ART MUSEUM AND COMES OUT BELABORING THE OBVIOUS"
BY PETER BAGGE 2004
(PETERBAGGE@EARTHLINK.NET)
SEATTLE'S HENRY ART GALLERY IS A TYPICALLY CONFUSING CONCRETE LUMP, HOUSING EQUALLY INCOHERENT ART WORK...
LIKE MANY SUCH ARTS INSTITUTIONS, THE HENRY IS BOTH LITERALLY AND FIGURATIVELY ATTACHED TO A PUBLIC UNIVERSITY, THUS BLURRING IT'S MISSION WITH THAT OF "HIGHER EDUCATION"...
ON A RECENT VISIT, I HAD THE MISFORTUNE OF CATCHING AN EXHIBIT BY THE "PLAYFUL" FURNITURE DESIGNER ROY McMAKIN...
THIS PILE OF FURNITURE IS MAKING ME NAUSEOUS...*
WHY IS IT EVEN HERE?*
THE BROCHURE DOESN'T EXPLAIN WHY THIS IS IMPORTANT...*
?
THE MY DOLLS
PLEASE DON'T STEP ON THE ART
*ACTUAL OVER-HEARD QUOTES
ALSO AT THE HENRY WAS AN EXHIBIT HONORING THE CHOREOGRAPHER TRICIA BROWN, WHOSE PERFORMANCE ART TYPIFIED THE EYE-ROLL-INDUCING SELF-INDULGENCE THAT HAS DOMINATED THE FINE ART WORLD SINCE THE 1960S...
WATCHING AN OLD FILM OF MS. BROWN PRANCING ABOUT WITH A PROJECTOR STRAPPED TO HER BACK MAKES ONE WONDER IF THIS IS WHAT HER FOLKS HAD IN MIND WHEN THEY ENROLLED HER IN TAP LESSONS...
THEN AGAIN, SHE DID BUILD A CAREER OUT OF THIS NONSENSE!
AS IF TO ILLUSTRATE HOW NOTHING HAS CHANGED, THIS EXHIBIT ALSO FEATURED ANOTHER UNINTENTIONALLY HILARIOUS VIDEO LOOP BY ONE OF TRICIA'S ATTENTION-STARVED PROGENY, WHOSE MOTIONLESS STARE WOULD OCCASIONALLY BE PUNCTUATED BY SUDDEN GESTURES LIKE BARING HER CLAWS, OR POINTING AT THE WALL BEHIND HER...
HAW!
THE CARD SAID THIS "PIECE" IS ON LOAN FROM SOMEONE'S PRIVATE COLLECTION...
SOMEBODY OWNS THIS THING? DO THEY LEAVE IT RUNNING IN THEIR HOME ALL DAY?!

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AS A FORMER NYC. RESIDENT, ART SCHOOL DROPOUT, AND PRACTITIONER OF WHAT USED TO BE THE LEAST RESPECTED ART FORM OF ALL (COMIC BOOKS), MY FEELINGS TOWARD THE CONTEMPORARY FINE ART WORLD HAVE ALWAYS BEEN A MIX OF BEMUSEMENT, RESENTMENT AND CONTEMPT.
SO, WHAT DO YOU THINK OF THE ART?
?!? WHAT "ART"?
—OH, THE ART! WHY, IT'S FABULOUS, DAHLINK!

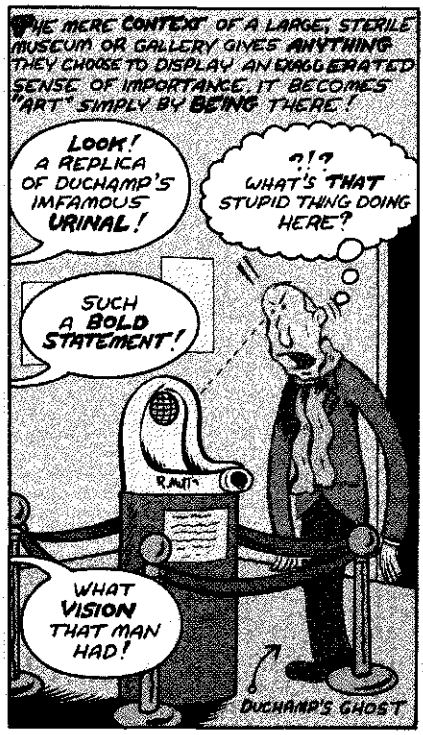
95% OF WHAT THEY'RE HYPING IS **PURE CRAP**, YET IF YOU DARE TO SAY AS MUCH OUT LOUD **YOU'LL** BE LOOKED UPON AS A **CLUELESS PHILISTINE!**

ANOTHER THING THAT ALWAYS KILLED ME IS THOSE CARDS ACCOMPANYING EACH PIECE, EXPLAINING WHAT YOU'RE LOOKING AT IN THE MOST VAGUE, POMPOUS, AND CONDESCENDING COLLEGE-THESIS TERMINOLOGY IMAGINABLE...
..."THIS PORTRAIT BY CATHERINCOPIE BLURS ALL OUR ASSUMPTIONS ABOUT RACE, GENDER, + BODY ADORNMENT..."
?! IT DOES?
...WAIT A MINUTE— NO, IT DOESN'T!

WHY DO THEY HAVE THESE? WHAT PURPOSE DO THEY SERVE? DO THEY THINK WE'RE ALL RETARDED?

THESE SAME CARDS OFTEN CHALLENGE US TO "RE-EXAMINE" OUR "ATTITUDES", WHILE SIMULTANEOUSLY URGING US TO "DRAW YOUR OWN CONCLUSIONS" ABOUT THE WORK...
ONLY SKIN DEEP
EVOLVING IDEAS ABOUT RACE
OH, HOW SAD...
HAW!

BUT DO THE CURATORS REALLY BELIEVE THAT ANY CONCLUSION IS AN ACCEPTABLE ONE?


THE MERE CONTEXT OF A LARGE, STERILE MUSEUM OR GALLERY GIVES ANYTHING THEY CHOOSE TO DISPLAY AN EXAGGERATED SENSE OF IMPORTANCE. IT BECOMES "ART" SIMPLY BY BEING THERE!
LOOK! A REPLICA OF DUCHAMP'S INFAMOUS URINAL!
?!? WHAT'S THAT STUPID THING DOING HERE?
SUCH A BOLD STATEMENT!
WHAT VISION THAT MAN HAD!
DUCHAMP'S GHOST

MARCEL DUCHAMP MADE THIS POINT A CENTURY AGO WHEN HE ENTERED A URINAL IN AN OPEN ART EXHIBIT, BUT SINCE THEN HIS PRANK HAS BECOME THE BASIS OF AN ENTIRE RACKET!

THE FINE ART WORLD CLAIMS THAT THEY VALUE IDEAS, YET THEY TEND TO CONSIDER TRADITIONAL CRAFTSMANSHIP TO BE ANTITHETICAL TO COMMUNICATING "NEW IDEAS."
OH DEAR, NOT ANOTHER MONSTROSITY BY THAT BARBARIAN, ROBERT WILLIAMS...
SOMEONE SHOULD HANG HIM INSTEAD OF HIS "PAINTINGS"!
ART CRITIC

TO THEM, AN ARTIST WHO CAN SKILLFULLY PAINT REPRESENTATIONAL IMAGES ISN'T REALLY A "PAINTER" AT ALL, BUT A MERE "ILLUSTRATOR".

THIS AVERSION TO CRAFTSMANSHIP IS THE INEVITABLE RESULT OF THE FRAGILE, EASILY DEBUNKED AESTHETIC THAT THE FINE ART ESTABLISHMENT DESPERATELY CLINGS TO...
CLAY, YOU HAVE A FLAIR FOR DECORATING...
WHERE DO YOU THINK I SHOULD HANG MY NORMAN ROCKWELL PRINT?
"NORMAN ROCKWELL"? UGH!
MIGHT I SUGGEST THE BATHROOM?

AS IS THE CASE WITH ALL SELF-APPOINTED ARBITERS OF TASTE, THEY FEEL COMPELLED TO DENIGRATE ANYTHING THAT THE AVERAGE SCHMUCK CAN RECOGNIZE AS QUALITY WORK.

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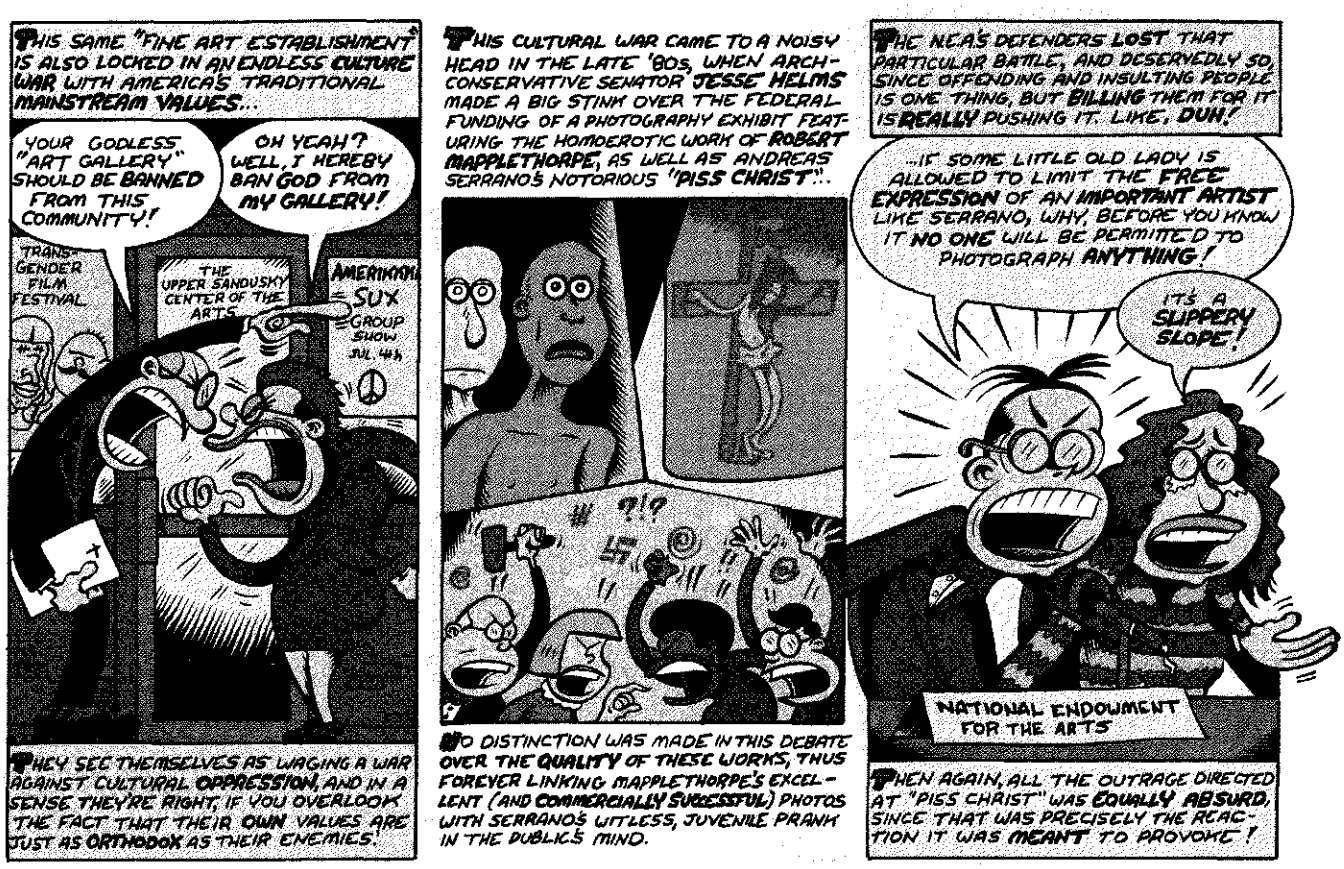
THIS SAME "FINE ART ESTABLISHMENT" IS ALSO LOCKED IN AN ENDLESS CULTURE WAR WITH AMERICA'S TRADITIONAL MAINSTREAM VALUES...
YOUR GODLESS "ART GALLERY" SHOULD BE BANNED FROM THIS COMMUNITY!
OH YEAH? WELL, I HEREBY BAN GOD FROM MY GALLERY!
TRANS-GENDER FILM FESTIVAL
THE UPPER SANDUSKY CENTER OF THE ARTS
AMERIKKKA SUX GROUP SHOW JUL. 4th
THEY SEE THEMSELVES AS WAGING A WAR AGAINST CULTURAL OPPRESSION, AND IN A SENSE THEY'RE RIGHT, IF YOU OVERLOOK THE FACT THAT THEIR OWN VALUES ARE JUST AS ORTHODOX AS THEIR ENEMIES.
THIS CULTURAL WAR CAME TO A NOISY HEAD IN THE LATE '80S, WHEN ARCH-CONSERVATIVE SENATOR JESSE HELMS MADE A BIG STINK OVER THE FEDERAL FUNDING OF A PHOTOGRAPHY EXHIBIT FEATURING THE HOMOEROTIC WORK OF ROBERT MAPPLETHORPE, AS WELL AS ANDREAS SERRANO'S NOTORIOUS "PISS CHRIST"...
?!?
NO DISTINCTION WAS MADE IN THIS DEBATE OVER THE QUALITY OF THESE WORKS, THUS FOREVER LINKING MAPPLETHORPE'S EXCELLENT (AND COMMERCIALLY SUCCESSFUL) PHOTOS WITH SERRANO'S WITLESS, JUVENILE PRANK IN THE PUBLIC'S MIND.
THE N.E.A.'S DEFENDERS LOST THAT PARTICULAR BATTLE, AND DESERVEDLY SO. SINCE OFFENDING AND INSULTING PEOPLE IS ONE THING, BUT BILLING THEM FOR IT IS REALLY PUSHING IT. LIKE, DUH!
...IF SOME LITTLE OLD LADY IS ALLOWED TO LIMIT THE FREE EXPRESSION OF AN IMPORTANT ARTIST LIKE SERRANO, WHY, BEFORE YOU KNOW IT NO ONE WILL BE PERMITTED TO PHOTOGRAPH ANYTHING!
IT'S A SLIPPERY SLOPE!
NATIONAL ENDOWMENT FOR THE ARTS
THEN AGAIN, ALL THE OUTRAGE DIRECTED AT "PISS CHRIST" WAS EQUALLY ABSURD, SINCE THAT WAS PRECISELY THE REACTION IT WAS MEANT TO PROVOKE!
SUPPORTERS OF THE N.E.A. LOVE TO MAKE THIS TIRED "FOR THE MERE PRICE OF A CUP OF COFFEE" ARGUMENT WHEN POINTING OUT THE RELATIVE COST OF ARTS FUNDING TO THE AVERAGE TAXPAYER...
WHY, FOR EVERY DOLLAR OUR GOVERNMENT SPENDS ON THE ARTS, THEY SPEND A GAZILLION DOLLARS ON THE PENTAGON WAR MACHINE!
GOSH, I NEVER THOUGHT OF IT THAT WAY..
'CUZ WAR IS A BAD THING TOO, RIGHT?
...WHILE BLITHELY IGNORING THE FACT THAT NO ONE EVER WENT TO JAIL FOR REFUSING TO BUY A CUP OF COFFEE!
THEN THERE'S THIS BOGUS DISTINCTION BETWEEN "DIRECT" AND "NON DIRECT" FUNDING, SINCE THE LATTER IS JUST A CLEVER WAY FOR GRANT PROVIDERS TO COVER THEIR TRACKS.
(PSST! TAKE YOUR CUT AND PASS IT ON...
HERE'S YOUR GRANT, MR. ARTIST! NOW GO CREATE!
?!?
FOUR DOLLARS?
AND WITH THE FEDS FUNDING STATE-RUN "ART COUNCILS" THAT THEN FUND PRIVATE ORGANIZATIONS, IT'S A BUNCH OF PAPER-PUSHING BUREAUCRATS TAKING UP THE LION'S SHARE OF OUR PRECIOUS ART FUNDING.
TO AVOID FURTHER CONTROVERSY, THE N.E.A. NOW MOSTLY BACKS "SAFE" INSTITUTIONS LIKE SYMPHONIES AND BALLET COMPANIES WHOSE AVERAGE TICKET PRICES OF $50.00 BELIE THE NOTION THAT THEY'RE BRINGING "THE ARTS" TO THE UNWASHED MASSES.
YOU NEED ME, DES MOINES...
GAAAH! "ZOMBIE BILL" IS BACK!
CAN'T WE JUST WATCH RE-RUNS OF "FRASIER" INSTEAD?
AND NOW THERE ARE ALL THESE HEAVILY FUNDED SHAKESPEARE COMPANIES CURRENTLY PLAGUING THE NATION. HEAVEN FORBID A SINGLE COMMUNITY SHOULD LIVE WITHOUT THE BARD'S HOKEY, UNINTELLIGIBLE 400-YR-OLD SITUATION COMEDIES!

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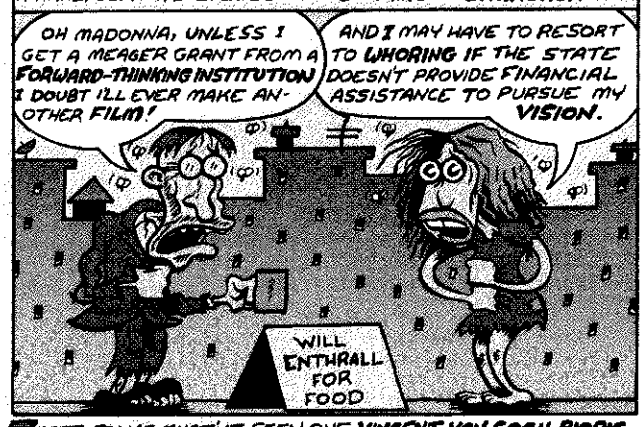
PUBLIC AND PRIVATE GRANT PROVIDERS ARE NOW SO SKITTISH THAT YOU'D BE HARD PRESSED TO FIND ANYTHING THAT MIGHT BE DEEMED SCANDAL-WORTHY. AND BELIEVE ME, I TRIED!

THE MOST RISQUÉ ITEM I CAME ACROSS WAS SOME "NAKED FILM FESTIVAL", WHOSE MISSION IS TO ADVOCATE "NON-SEXUALIZED, FREE-RANGE NAKEDNESS." "FREE RANGE"?!? THANKS FOR MAKING NUDITY BORING, FOLKS!

THESE ARTS ORGANIZATIONS ALSO TEND TO THINK OF "ARTISTS" AS SOME ABSTRACT, ROMANTICIZED "OTHER" — AS IF THEY WERE A RARE, DELICATE SPECIES FACING IMMINENT EXTINCTION...


OH MADONNA, UNLESS I GET A MEAGER GRANT FROM A FORWARD-THINKING INSTITUTION I DOUBT I'LL EVER MAKE ANOTHER FILM!
AND I MAY HAVE TO RESORT TO WHORING IF THE STATE DOESN'T PROVIDE FINANCIAL ASSISTANCE TO PURSUE MY VISION.
WILL ENTHRALL FOR FOOD

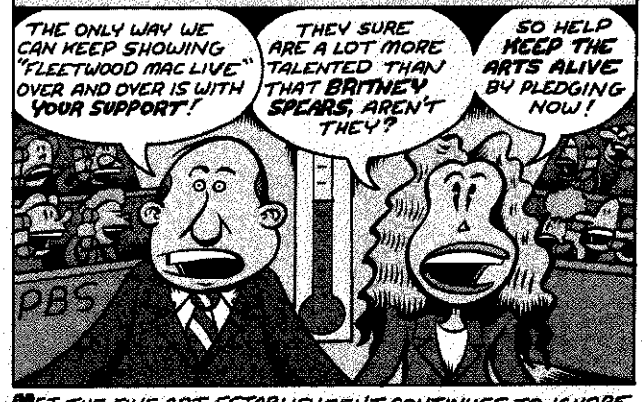
THESE FOLKS MUST'VE SEEN ONE VINCENT VAN GOGH BIOPIC TOO MANY, AND THE FACT THAT PEOPLE LIKE STEVEN SPIELBERG AND MADONNA ARE ALSO ARTISTS NEVER CROSSED THEIR MINDS!

I CAN APPRECIATE THE FRUSTRATION THE RANK AND FILE OF THESE ORGANIZATIONS MUST FEEL. THEY'D LOVE TO BE ABLE TO STIR THINGS UP, IF ONLY THOSE UPTIGHT POLITICOS WEREN'T WATCHING THEM LIKE HAWKS!

I WOULD LOVE TO SPONSOR AN EXHIBIT OF JOHN WAYNE GACY'S PAINTINGS...
BUT I'M AFRAID TO EVEN PROPOSE THE IDEA TO THE STUFFED SHIRTS I WORK FOR!

YET THEIR OPINION OF WHAT CONSTITUTES GREAT ART IS SHARED BY A VERY LIMITED SEGMENT OF THE PUBLIC. IT'S JUST ANOTHER GENRE, FOR ALL INTENTS AND PURPOSES. SO WHY SHOULD THE REST OF US BE OBLIGED TO SUBSIDIZE THEIR FAVORITE GENRE?

EVENTUALLY, ANYTHING AND EVERYTHING WILL BE CHAMPIONED AS "REAL ART" BY SOMEONE. THE BEE GEES HAVE RECENTLY BEEN IMMORTALIZED BY P.B.S., F'R CRYIN' OUT LOUD!

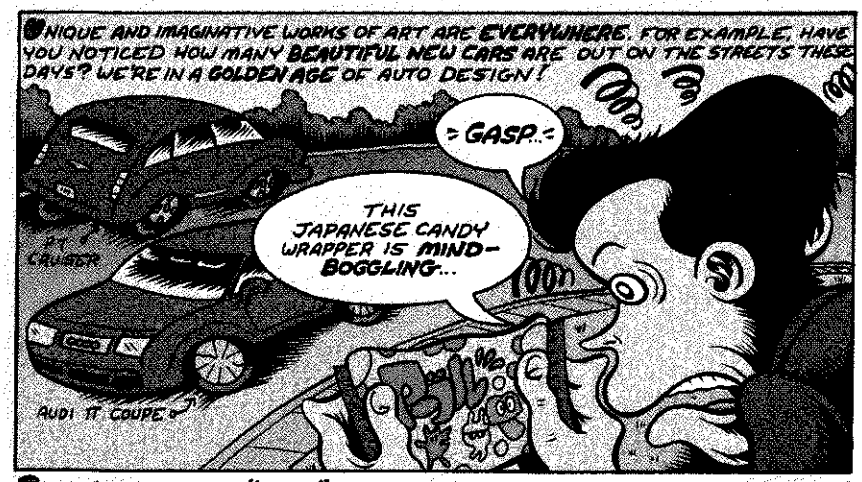

THE ONLY WAY WE CAN KEEP SHOWING "FLEETWOOD MAC LIVE" OVER AND OVER IS WITH YOUR SUPPORT!
THEY SURE ARE A LOT MORE TALENTED THAN THAT BRITNEY SPEARS, AREN'T THEY?
SO HELP KEEP THE ARTS ALIVE BY PLEDGING NOW!
PBS

YET THE FINE ART ESTABLISHMENT CONTINUES TO IGNORE AND MALIGN ALL CURRENT POPULAR ASPECTS OF WESTERN POP CULTURE, AS THEY KEEP TRUMPETING SELF-IMPORTANT NONSENSE THAT NOBODY WANTS OR NEEDS.

TO BE FAIR, I DO COME ACROSS SOME AMAZING EXHIBITS FROM TIME TO TIME, LIKE THIS COLLECTION OF TEA SETS DESIGNED BY VARIOUS ARCHITECTS I SAW AT THE WEXNER CENTER IN COLUMBUS, OH...

AH, BUT NOT ONLY WERE THE INDUSTRIAL DESIGNS ON DISPLAY IN SONY'S TOKYO SHOWROOM JUST AS DAZZLING, THEY ALSO ACTUALLY WORK!

UNIQUE AND IMAGINATIVE WORKS OF ART ARE EVERYWHERE. FOR EXAMPLE, HAVE YOU NOTICED HOW MANY BEAUTIFUL NEW CARS ARE OUT ON THE STREETS THESE DAYS? WE'RE IN A GOLDEN AGE OF AUTO DESIGN!



RATHER THAN TRY TO "TEACH" PEOPLE TO APPRECIATE ART THAT HAS NO MEANING OR RELEVANCE TO THEIR LIVES, WE SHOULD INSTEAD BE MARVELING AT THE COUNTLESS INSPIRED MAN-MADE OBJECTS THAT LITERALLY SURROUND US, BOTH INSIDE AND OUTSIDE OUR OWN HOMES. SO WHO NEEDS MODERN ART MUSEUMS?!?

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Chatroom Revolutionaries

Iran's dissidents and exiles discover the Web

Marc C. Johnson

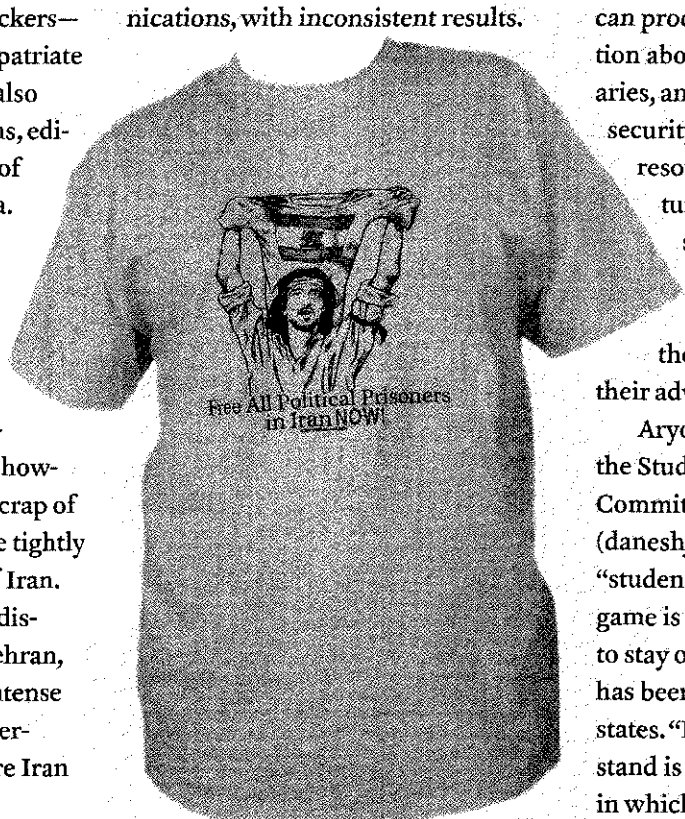
"GOT A MULLAH?" asks a stainless steel coffee mug for sale on the Web. Emblazoned alongside the question is a cartoon of a giant hand clenching two irritated-looking clerics who resemble Iran's late Ayatollah Ruhollah Khomeini.

One click away, a heather gray, 100-percent cotton T-shirt proclaiming "Free All Political Prisoners in Iran NOW!" features a famous image of Ahmad Batebi, an Iranian film student sentenced to 15 years for anti-mullah activities. The widely reproduced image shows Batebi's "crime": holding aloft a bloodstained shirt that belonged to a friend beaten by regime forces.

Both items—along with lunch boxes, greeting cards, and bumper stickers—are available to any Iranian expatriate at activistchat.com, a site that also features news, petitions, forums, editorials, and other information of interest to the Iranian diaspora. Such sites are the tools of the would-be next Iranian revolution. Many are produced by revolutionaries who grew up not in Iran but in Europe and North America. They communicate with their comrades however they can, surfing for any scrap of news available from within the tightly controlled Islamic Republic of Iran. Aside from their unconcealed disdain for the ruling clerics in Tehran, they are characterized by an intense nationalism and not a little intergroup disagreement over where Iran should be headed.

"I cannot go into specifics," Potkin Azarmehr, director of the Campaign to Free Iran's Students (cfisnews.com), says cryptically of his group's work with those inside Iran. Careless communications, the dissidents explain, can trigger crackdowns, closing precious avenues of contact. "Certainly the global communications revolution has made things a lot easier," he says. "You only have to look at the areas in which the Islamic Republic has endeavored to crack down," he adds, to get clues about how the world of dissident Iranians is operating.

In fact, the way the opposition communicates with students inside Iran is no great secret. E-mails, chat rooms, and phone calls to family and friends are the only near-real-time ways to find out what is going on inside the Islamic Republic. All involved are acutely aware of the fact that Iran's intelligence and security services try to intercept such communications, with inconsistent results.



T-shirt from activistchat.com

Roozbeh Farahanipour, executive director of the Glorious Frontiers Party (marzeporgohar.org), notes matter-of-factly that such communications are dangerous, "because if the regime finds out, you are probably going to be executed." But for the students and their supporters, that's a very big *if*.

The students believe that in the long run they can defeat the regime's security efforts. But the regime isn't their only problem. Despite their high-tech communications, expatriate opponents of the regime face a number of low-tech challenges. Among them are competing agendas, a debilitating scramble for leadership, and a chronic lack of funds.

Such challenges notwithstanding, the dissidents make daily efforts to undermine the regime. As with all authoritarian governments, the Islamic Republic's security agencies can process only so much information about the counterrevolutionaries, and they are constrained by security requirements, financial resources, even the banal strictures of available time. The student groups know this and hope that through sheer message volume and guile they can stay one step ahead of their adversaries.

Aryo Pirouznia, spokesman for the Student Movement Coordination Committee for Democracy in Iran (daneshjoo.org—*daneshjoo* means "student"), observes that when the game is cat and mouse, the mice have to stay on the cutting edge. "Our site has been blocked" by the regime, he states. "But what they don't understand is that...we are not in an age in which a country's borders can be

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closed." Indeed, dissident groups have found a technological solution to their communications problems: Anonymizer.

This program, which allows surfers to view sites while concealing their identities by going through an anonymous proxy server, has been a boon to the Iranian students. When the Iranian security apparatus finally catches up with them, Pirouznia explains, "We change, then they change. We change user names, we change places. We use several chat rooms now. You have the public chat rooms, which are totally monitored [by the regime]; then you have the private chat rooms, which we use."

Proxy servers and chat rooms are not the only Internet-based approaches Pirouznia's group uses. Such groups are also sending encrypted and compressed documents via U.S.-based free e-mail accounts, a tactic also used by organized criminals, terrorists, spies, journalists, and even businessmen.

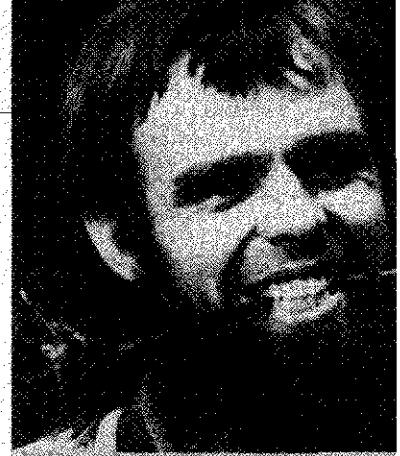
"Let's imagine you have Hotmail, Yahoo, whatever, and you are in Iran," Pirouznia says. "You have several accounts. Why? Because the [Internet backbone] 'belongs' to [the Iranian security services], you can't claim, 'I never went to Yahoo or Hotmail.' They say, 'Here is the log. You went to it.'" But by having numerous accounts, and by using at least one of them only for apparently benign activities such as sending jokes and family gossip, the user covers his dissident communications. The other accounts, says Pirouznia, "are destroyed after a time, and you get another under another name. And all of the materials that come and go, they are all encrypted. It has become a way of life."

American administrations since the late 1980s have ignored the student groups, instead pursuing a policy of unofficial dialogue with the Islamic Republic. The would-be revolutionaries' unrequited desire for attention, however, may be coming to an end. In August 2003, for example, the International Broadcasting Bureau, the agency that administers such services as Radio Free Europe, confirmed for the information technology newsletter Security Focus that Uncle Sam would give every Iranian with Internet access a free subscription to Anonymizer—as long as the subscriber was resident in Iran. Neither the bureau nor Anonymizer will disclose how much this deal is worth, but it could total up to 2 million users.

And last May, Sen. Sam Brownback (R-Kan.) sponsored Senate Bill 1082, the Iran Democracy Act, intended to reform Radio Farda (a sort of Farsi Voice of America), provide grants to other external Iranian media, and back a referendum on Islamic rule. Most observers believe the bill was meant to be a shot across the Islamic Republic's bow. Brownback's bill has not been signed into law, however, and further legislation is unlikely in an election year. Congressional interest notwithstanding, the dissident groups, both external and internal, are still largely on their own.

The sites officially represented by Azarmehr, Pirouznia, and Farahanipour are three of perhaps a dozen that form the core of the Iranian opposition in exile's fractious electronic vanguard. There are monarchists, socialists, constitutionalists, Zoroastrians, republicans, hard-core communists, moderate Islamists, Mossadeghists, Azeris, and other less well-defined confederations of students, aging ex-students, and businessmen distributed throughout the West. They are far from unified.

Iran watchers believe that "the opposition" is a misnomer, that there simply is no unified opposition. Privately, many members of the opposition will admit as much. Why they can't unify is a tougher question. Pirouznia attributes it to Iranian character. "We have a problem with being self-centered," he argues. "If I am a political activist, I think that everything



The Prankster and the Conspiracy (cover detail)

Historia Discordia

Meet Kerry Thornley, the second Oswald

by Jesse Walker

Kerry Thornley lived and died in obscurity. But while few people noticed, he invented one of the 20th century's more influential religions, helped launch '60s-style sex-and-nature neopaganism, and was a major force behind the first modern libertarian 'zine.

He was also, to hear him tell it, part of the conspiracy to murder JFK, and thus escalate the Vietnam War—a conspiracy so secret even Thornley didn't know about it at the time.

Thornley was one of America's most fascinating unknowns. It is fitting, given the underground nature of his claims to fame, that his first biography, *The Prankster and the Conspiracy: The Story of Kerry Thornley and How He Met Oswald and Inspired the Counterculture*, by Adam Gorightly, is published in the quasi-clandestine form of a print-on-demand book from Paraview Press.

Thornley helped his high school buddy Greg Hill invent the comedic religion of Discordianism in dull suburban »

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should be channeled through me."

The only times in recent memory that the expatriate opposition has even gathered around the same table have been during periods of major crisis for those still in Iran—when the regime has cracked down on dissent. Even when they do get together, it rarely results in any significant action. Describing an "old guard" among the opposition, Azarmehr says: "One thing which seems very fashionable amongst the Iranian opposition outside Iran is signing up to charters. They gather in some hotel, draw up a charter, and put their signatures at the bottom of the charter. Then they go away and nothing further happens."

Azarmehr's point is underlined by the array of Web sites advocating alternatives to the current regime, each of which seems to have a petition or charter of its own. With some, like activistchat.com, the ideology is difficult to divine on first examination; the site espouses secularism and provides news. Others, such as the Iran National Front (jebhemelli.net), proudly proclaim, "our path is the Mossadegh path," referring to the Iranian prime minister ousted by a CIA-backed coup d'etat in 1953.

Still others want to re-install a shah on the Peacock Throne.

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Freemyiran.com, a site that features pro-monarchist elements, offers free bumper stickers as well as flyers in Adobe Acrobat format that supporters can print out and distribute. And far from the front lines, in the suburbs of Washington, D.C., Reza Pahlavi, son of the late shah, is pushing his own political agenda with books, a Web site, and public appearances. Skirting a discussion of the troubling human rights record of the shah's intelligence and security service, the SAVAK, rezapahlavi.org provides position papers and speeches advocating secularism and a referendum on Islamic rule.

Farahanipour's Glorious Frontiers Party advocates a boycott of Shell Oil, the Dutch petroleum conglomerate that does business with the regime. Farahanipour's point is one pushed by many parts of the opposition: Cut off the money—in particular the European investment that continues to support the leaders in Tehran—and you will sever the regime's lifeline. His site—which features a picture of a lion holding a sword in front of a blazing sun, a favored pre-revolutionary symbol—asks the visitor to "support Iranians in their fight against religious apartheid in Iran."

Farahanipour concedes the diversity of opposition groups may be the external dissidents' undoing. "Unfortunately, each group wants to be the leader of the opposition," he says. "Most groups focus their attention on putting down other groups, so they can make themselves more credible. The majority of political groups outside Iran simply do not have any power or members inside Iran."

The one factor that seems to bind the groups together is that their members all have day jobs. For the most part, funding is so scarce that they are beholden to a few meager donations from well-meaning businessmen. Despite the considerable size and relative affluence of the Iranian diaspora, the groups say funds are slow to come. Azarmehr, whose organization is based in Britain, complains: "Hardly any money comes from anywhere...Our own income last year came from one donor who gave a few hundred pounds to us to print some T-shirts with the picture of Batebi... and the sale of those T-shirts and our own individual donations has been our entire budget. We are all part-time activists and have the normal stresses of having full-time jobs."

Pirouznia spins it a different way. "We are night partisans and day workers," he says cheerfully.

The internal groups are finding it especially hard to make ends meet. "There is hardly any money which is being channeled to the combatants inside Iran," says Azarmehr. "We are talking about a few thousand pounds in irregular donations. Certainly compared to the financial backing that Khomeini had from some foreign sources and the Iranian bazaar merchants [in 1979], we really are talking a pittance." Farahanipour echoes this point: "We get our money from personal donations and our members. Whatever money we do receive, we simply try to pass on to our members inside Iran, or fund events to inform the public of what's going on in Iran."

To simplify the donation process, some of the groups have adopted high-tech money raising techniques. Several have signed onto PayPal and other online money transfer services. Farahanipour attributes the difficulty in raising funds to confusion about the groups themselves; he even hints

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at malfeasance by other anti-regime fund-raisers. "Unfortunately Iranians that live outside Iran have been lied to so frequently by the supposed opposition that they no longer believe that there are genuine opposition groups that need their donations," he says.

Few, if any, of the Iranian opposition groups receive U.S. government money, at least overtly. Radio Farda, funded through the State Department, keeps the opposition groups largely at arm's length. This suits the opposition, which takes a dim view of the State Department's strategy

"We are asking not to intervene militarily; that would be the biggest mistake the U.S. could make," says one dissident. "We ask for moral support."

of engagement with the Islamic Republic. Farahanipour scoffs that Mohammed Khatami, Iran's reformist president, "attempted to show that a theocracy can be made a democracy, and it seems the only [people] he fooled were the State Department."

The Iranian opposition groups were apoplectic when—following a dinner in January with Mohammed Javad Zarif, Iran's permanent envoy to the United Nations—several members of Congress proposed an official visit to Iran. Opposition message boards around the world lit up, their participants incensed at the idea of rapprochement with the mullahs. It was spectacularly bad timing for the proposal, coming just as the Guardians' Council was disqualifying reformist parliamentarians from running in the February elections.

In the end, the opposition groups needn't have worried. Iranian foreign ministry spokesman Hamid Reza Asefi indicated that the trip was "not on the agenda," a diplomatic way of telling the American politicians they couldn't invite themselves to Tehran so easily.

The State Department and errant members of Congress are not the only such objects of scorn. The European Union is derided by many groups for its "critical dialogue" policy, which stipulates that engagement with the clerical regime can in the long run improve conditions for ordinary Iranians. "We have always had a bad experience with European countries," says Farahanipour. "If you were to draw out all the advancements the E.U.'s critical dialogue brought, you'd be hard pressed to cite three things."

Azarmehr is equally skeptical of European efforts. Iranians, he says, "want the E.U. to finally admit that their policy of critical dialogue with the Islamic Republic in the last 25 years has been futile." Azarmehr observes that the Islamic Republic "still abuses human rights, still sponsors terrorism and still destabilizes peace and prosperity in the Middle East and the world despite 25 years of 'critical dialogue' by the European Union countries."

What the groups want from America is solidarity, especially rhetorical support from the White House in their campaign to delegitimize the mullahs. "We welcome any support, but not involvement," Farahanipour says. "When President Bush spoke of how Americans are standing with the people of Iran in their quest for democracy, that was moral support."

Pirouznia agrees. "In general the new U.S. administration has understood the reality of things going on in Iran," he says. "We are asking not to intervene militarily; that would be the biggest mistake the U.S. could make. We ask for their moral support."

Marc C. Johnson (mcjohnson@veritas-analytics.com), a former CIA officer, is a consultant and freelance writer in Washington, D.C.

Southern California in the late 1950s. It was dedicated to the worship of Eris, the Greek goddess of Chaos. Its flavor can be gleaned from this bit of powerful magick, the Turkey Curse, from its holy book, the *Principia Discordia*: "Face...towards the direction of the negative aneristic vibration that you wish to neutralize. Begin waving your arms in any elaborate manner and make motions with your hands as though you were Mandrake feeling up a sexy giantess. Chant, loudly and clearly: GOBBLE, GOBBLE, GOBBLE, GOBBLE, GOBBLE! The results will be instantly apparent."

Thornley joined the Marines in 1959, where one of his buddies at the El Toro Marine Base was Lee Harvey Oswald, an openly communist "outfit eight ball" known to his fellow grunts as "Oswaldskovitch."

Thornley began writing a novel based on his disillusioning experience in the Marines. After hearing that ol' Oswaldskovitch really meant it with that commie stuff when he defected to the Soviet Union, Thornley transformed the book, called *The Idle Warriors*, into a *roman à clef* about Oswald—making Thornley the only person to write a book about Lee Oswald *before* that fall day in Dallas.

Thornley was living in New Orleans when John F. Kennedy was killed, hanging out, according to his own recollections (which some friends suspect Thornley invented) with a curious cast of characters. Among them were some unfortunates »

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Globalization Without Tears

An economist debates the NGOs.

Prakash Loungani

In Defense of Globalization, by Jagdish Bhagwati, New York: Oxford University Press, 308 pages, $28

ONE'S FIRST IMPULSE on coming across yet another book on globalization, even (or particularly?) by a Nobel-caliber economist, is surely to keep on moving: Most turn out to be dry treatises that end up convincing readers they were right to hate their economics courses in college.

It's an impulse worth resisting in the case of Jagdish Bhagwati's *In Defense of Globalization*, a book that amuses as it instructs. The author, a professor at Columbia University and one of the world's leading scholars of international trade and development, has grappled in many arenas with nongovernmental organizations (NGOs)—the leaders in the fight against "globalization," the process of economic integration of nations through trade and international flows of capital and people. He understands why NGOs fear that globalization causes social ills. But while he concedes that some of the anti-globalizers' complaints have merit, he is bold enough to label their arguments "rubbish" when warranted.

Bhagwati concludes that fears of globalization deserve an "extended and careful response," not out-of-hand dismissal, but are in the end "a false alarm." He is mostly satisfied with what globalization has accomplished. But some of his recommendations for moving it to a next step, one more congenial to its current ideological enemies, are ultimately unconvincing.

Bhagwati's book starts by discussing the rise of the NGO movement because, as he generously acknowledges, the debates over the effects over globalization today owe their "salience, shape and content" to this movement. But he slyly suggests that the NGOs' rise might be more in the number of groups than in the number of citizens they represent. Take pity, he says, on poor Nigel Wilkinson, whose branch of the Radical Left Movement for Socialist Revolution had to be disbanded after the group's membership dwindled "by almost 70 percent over the last year from a peak of three members to just one—himself."

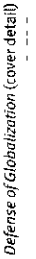
Wilkinson's sad fate notwithstanding, the NGO movement has grown into a global phenomenon. Bhagwati offers a variety of explanations. Among the poorer nations, the expansion in the education of women is a cause; in India these days, Bhagwati jokes, it's easier to attract a bride by offering her an NGO than by offering her a green card. In transition economies, he says, NGOs were a natural outgrowth of the "parallel politics" developed by Vaclav Havel and others as a "weapon for democratic progress in regimes governed by communists." But it is in the rich countries—and particularly among the young there—that the NGO movement has really taken off.

The young, says Bhagwati, see (or think they see) capitalism failing to deliver social justice. Lacking direct experience or historical knowledge of socialism, they don't realize it was in earlier systems that "the well-connected...could jump" queues, while capitalism allows "a larger number to make it to the check-out counter." Bhagwati also credits television images with increasing the empathy of the young in rich countries for the effects of poverty, famines, and civil wars in poorer areas of the world.

This book tries to show that major complaints about the adverse social effects of globalization are mistaken. Globalization in fact reduces poverty and the use of child labor, fosters women's rights, promotes respect for democratic norms, enriches culture, and even sustains the environment. Multinational corporations are not wreaking havoc by leveling wages and labor standards across the globe. In fact, they raise them. The "gotcha" examples produced by anti-globalizers of the occasional social harm done by globalization are exceptions and not the rule.

To show that globalization eases poverty, Bhagwati offers a tale of two continents. In 1970 average African incomes were 30 percent higher than average Asian incomes. Thirty years later, African incomes had remained stagnant and were then half of Asian incomes. While there were undoubtedly many causes of this reversal, Bhagwati documents that a primary one was that Asia opened itself and adapted to external markets while Africa did not. As a result, in 1970 Africa was home to about 10 percent of the world's poor and Asia to more than 75 percent, using standard measures of the absolute level of poverty. Thirty years later Africa had more than a third of the world's poor and Asia's share had declined to just 15 percent.

Looking more closely at developments within Asia bolsters the point. Who can doubt, Bhagwati asks, that the dramatic reductions in poverty in China and India came about only when these countries began integrat-



In Defense of Globalization (cover detail)

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ing with the world economy, mimicking the tactics of Japan, Korea, and Singapore? Trade and foreign direct investment boost growth, and growth reduces poverty.

Growing incomes from globalization then translate into progress toward social and environmental goals. Child labor falls, Bhagwati writes, because "when incomes improve, poor parents can generally be expected to respond by putting children back in school." This is exactly what happened, for instance, in the 1990s in Vietnam. Households used extra income from liberalized rice exports to put their children, and particularly their older girls, in school. And increased foreign competition—like competition more generally—narrows the gender wage gap. Bhagwati laments the attempts of feminist NGOs such as Women's Edge to force multilateral institutions to analyze the "gender effects" of their actions. "Women, as a class, are not destined to lose from progress," he says. To demand, as the NGOs do, that every World Trade Organization (WTO) ruling be examined specifically from the viewpoint of women's welfare is, Bhagwati writes, "about as compelling as saying that the removal of potholes from New York's roads be subjected to a prior examination of whether women are more likely to fall into them."

A country's environmental quality also improves with sustained income growth because economic activity tends to shift away from pollution-intensive primary production and manufacturing toward service industries. At between $5,000 and $6,000 annual income per capita, income growth and environmental gains go hand in hand. Many countries are still far from this income level, but Bhagwati notes that because technology is constantly getting more environment-friendly, developing countries are starting to see their environmental quality improve at a much lower income threshold.

Another common complaint about globalization—generally from Westerners rather than the cultures allegedly despoiled by Westerners—is that it spreads an unlovely cultural homogenization. Bhagwati observes that the fear of "McDonaldization" is prevalent in all strata of French society, from the radical farmer José Bové to Alain Rollat of *Le Monde,* who declared that "resistance to the hegemonic pretenses of hamburgers is, above all, a cultural imperative." But the evidence is that McDonald's is quite

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caught in New Orleans District Attorney Jim Garrison's feckless investigation into the JFK assassination.

What is definitely not Thornley's imagination, though, is that he was dragged into the "Who Killed Kennedy?" melodrama, testifying before the Warren Commission and targeted by Garrison, who thought Thornley might have been part of the conspiracy as a "second Oswald." The two men allegedly looked quite similar, and there was a weird series of coincidences linking them.

In the mid-'60s Thornley headed back west and became a major writer for the first modern libertarian 'zine, *The Innovator.* In those years he also became an advocate of the early SoCal free love cult Kerista, which neopagan historian Margot Adler credits, says Gorightly, as "the true beginnings of the neopagan movement in contemporary culture."

Through the '70s and the '80s the "order" reflected in his insanely elaborated conspiracy theories won Thornley's heart away from the chaos of Eris, and also lost him most of his old friends. No one wants to hang with someone who is sure you are part of a baroque conspiracy against him. Thornley had decided that Garrison was right after all, that he *was* a CIA mind-control slave, that a mysterious pal in New Orleans was E. Howard Hunt, and finally that he had been a Manchurian candidate from birth, with his parents Nazi spies.

He spent the last years of his »

responsive to local sensitivities. The golden arches have disappeared in some of the branches around Paris, the company's traditional red-and-yellow colors have been replaced by more muted tones, and espresso and brioche are now offered where culturally appropriate.

While generally indulgent toward globalization and skeptical about its opposition, Bhagwati is not a markets-above-all ideologue. He is unhappy, for example, with unregulated global flows of short-term capital, which he thinks devastated many Asian countries during the financial crisis of 1997–98. He rejects notions that Asians were in any way to blame for the crisis, calling it a "scapegoating of victims" put forward by those "with a desire to...maintain ideological positions in favor of...free capital flows."

The premature opening of capital accounts undoubtedly played some role in triggering the Asian crisis. But Bhagwati's analysis gives short shrift to other causes, such as the fixed exchange rate systems maintained by the Asian countries, the build-up of debt during the boom years, weaknesses in their corporate and financial systems, and, in the case of Indonesia, the corruption of Suharto's regime. Bhagwati's analysis runs the risk of providing false comfort to developing countries that financial crises can be staved off by throwing sand in the wheels to slow the entry of short-term foreign capital and imposing capital controls to keep it from flowing out.

So Bhagwati thinks multinationals' capital shouldn't necessarily be able to flow wherever it wishes. He also thinks ideas should flow freer than those companies wish. He condemns lobbying by multinationals for intellectual property protection through the WTO, arguing that trade and intellectual property should be separate issues. He says their forced union in the Trade-Related Aspects of Intellectual Property Protection agreement was a triumph of lobbying over logic.

"Pharmaceutical and software companies muscled their way into the WTO and turned it into a royalty-collection agency simply because the WTO can apply trade sanctions," Bhagwati writes. Intellectual property is now one of the three legs of a tripod—the other two being trade in goods and trade in services—on which the WTO is supposed to rest. Now other lobbies in rich countries want to inject their own agendas into the WTO. The trade unions want a social clause that would trigger trade sanctions against countries if Western labor standards were not met, and the environmentalists want the same done for nature.

Bhagwati suggests some ways to keep globalization going while easing its opponents' concerns. Unfortunately, these ideas are vague, and there's little evidence they'd do much good. Bhagwati wants, for example, to take steps to "accelerate the pace" of progress on social issues. That globalization delivers progress on social goals is no reason, he says, not to do more by deploying "additional policy instruments." But the major instrument he recommends is "a good tongue-lashing." He says "our ability to zero in on morally offensive practices has increased hugely. Embarrassment, if not shame and even guilt, allow tremendous leverage." He favors strengthening the review and monitoring functions of international agencies toward this goal of

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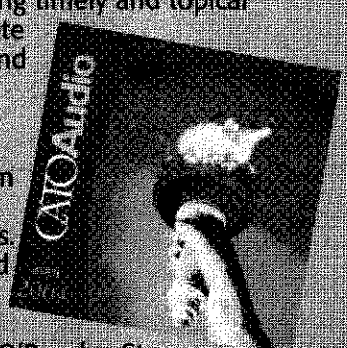

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shaming malefactors, but he doesn't provide any convincing examples of where these sorts of instruments have worked as he posits they might.

Bhagwati also says we must "put in place institutional mechanisms to cope with the occasional downsides of globalization." He notes that in principle there's no reason to single out trade as a cause of grief; he thinks all displaced workers should be supported through general, comprehensive schemes such as unemployment insurance and retraining programs. But because job loss from foreign competition evokes more outrage than job loss from domestic competition, he says, governments must "intervene with special support" when trade causes distress to preserve globalization's benefits. And the World Bank, he thinks, must be mobilized to provide the cash to do this for poor countries.

Many NGOs have an emotional stake in their anti-globalization positions: They protest to fill the void in their hearts created by the failure of socialism.

Bhagwati does not come to grips with evidence that existing trade adjustment assistance programs are ineffective. In the United States, for instance, many studies, including a comprehensive October 2000 investigation by the Government Accounting Office (GAO), have shown that such programs end up being very expensive and ultimately ineffective. They act as a disincentive for workers to find new employment quickly. And there is little to suggest that workers use this time to undergo the training that is supposed to shield them from moving to jobs that pay considerably less than the ones they lost. The GAO found that only one in five workers actually signed up for training, that three in five workers ended up in jobs where they had to take substantial pay cuts, and that weaknesses in administering the programs resulted in payments to ineligible workers.

Bhagwati also thinks we must manage "the speed of transition" to globalization. Far better to lower tariffs at a rate that does not endanger a country's political stability, he says, than to lower them to the floor right away and risk a backlash against the entire reform process. Bhagwati faults Western "shock therapists" for wreaking "havoc" in Russia by recommending too fast a pace of reforms. But he does not acknowledge that the danger with moving slowly on reforms is that the pace often comes to a full stop. This is what has happened in countries such as Ukraine and Moldova, where gradualism has in effect meant little reform and prolonged misery.

Bhagwati is equally unrealistic in his apparent belief that his proposals would win over globalization's strident enemies, bringing pro-globalization and anti-globalization forces together over "a shared success." He ignores his own suggestion that many NGOs have an emotional stake in their anti-globalization positions: They protest to fill the void in their hearts created by the failure of socialism. NGOs may also have a financial stake in continuing to protest. Bhagwati notes that Lori Wallach, a noted anti-globalizer, refused to release the list of contributors to an NGO with which she was associated, despite allegations that its anti-trade activities were funded by the protectionist textile magnate Roger Milliken.

Bhagwati has held out a hand to the NGOs in friendship but, to paraphrase one of his own lines, they have too much incentive to continue to bite it.

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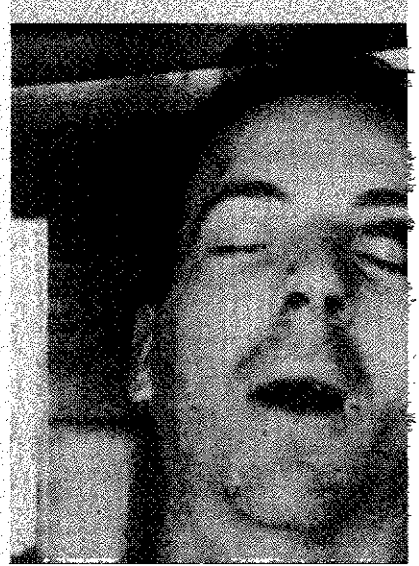
life (he died in 1998) occasionally washing dishes and living in storm drains, and hanging out as a local eccentric in Atlanta's Little Five Points neighborhood. A sad fate for someone dedicated to spreading forces of upheaval and chaos: from his Discordianism to his advocating a libertarian diaspora populating stateless floating cities in *The Innovator*, to his inspiration of Robert Anton Wilson and Robert Shea's classic trilogy, *Illuminatus!*, to all the aftershocks spreading from that earthquake of a novel.

But Thornley still got in his prankish fun, for example putting up flyers urging people to "Boycott the illegal weapons amnesty program: Don't bring your illegal weapons to the Super Bowl in exchange for tickets!" when the game was held in Atlanta in 1994.

A strange and troublesome man, that Thornley, serving Eris to the end, and proof that, while you don't have to be crazy to warp American culture, it helps.

Brian Doherty (bdoherty@reason.com) is a **reason** *senior editor and author of This Is Burning Man, out in August from Little, Brown.*



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Invisible Cities

The changing faces of Washington, D.C.

Charles Paul Freund

Down on Lower Pennsylvania Avenue, amid the courthouses and federal buildings, there used to be a run-down old diner called Barney's. Bureaucrats, after all, want to eat lunch too. Barney's was a real urban fossil, a reminder of the days when Washington's locals knew the famous street merely as "the Avenue" and when the area was full of department stores, pharmacies, restaurants, and other establishments that served local residents rather than the federal seat of power. That street is gone: Pennsylvania Avenue is now rebuilt as a grand parade route, lined with marble edifices and largely bereft of urban life. There's no place on it for a Barney's; the old diner was destroyed more than 20 years ago.

That's too bad, because Barney's actually reached back much farther into Washington's curious history, all the way back to the nation's own roots. Above Barney's ornate neon sign were a pair of Greek Revival windows that were the last surviving remnants of the old Metropolitan Hotel. That was one of the capital's premier hostelries when the city was an unpaved backwater and the muddy Avenue contained most of its commercial life. It was at the site of the Metropolitan (called Brown's in those days) that "The Star Spangled Banner" was first sung in Washington, and it was in its lobby that Abe Lincoln first signed for a room when he got to town.

Washington is an unusual palimpsest. It appears to lead at least two lives that have little to do with each other: a federal one that impinges on everyone and is constantly in the news, and a largely unknown local life. The larger and grander the capital has grown over the years, the more these two lives have seemed to diverge. But these apparently disparate narratives are only different pages from the same history: neither is complete without the other.

The city's usually separate lives meet, for a change, in James M. Goode's lavish work *Capital Losses: A Cultural History of Washington's Destroyed Buildings* (Smithsonian), a thickened update of a work first published in 1979. Goode, who spent 17 years as the curator of the Smithsonian Castle, has not assembled a picture book for nostalgics. In the course of presenting Washington's lost streetscapes and structures (among them Barney's), Goode also tells a tale of power, evoking the changing role of the city as a great (and not so great) capital. Reflected in hundreds of images of now-demolished wood, brick, and stone structures are the changing demands that resulted from the city's ever-expanding national and international roles. In Goode's pages one may trace the city's gradual shifts of identity, from the national capital's origin among obscure Potomac port towns to its long life as a middling Southern city to the latter-day pretensions to greatness that have often been undone by the mediocrity of its federal overseers and its own perfectly awful city government.

Early federal officials did very little with their capital city; they even refused for 75 years to pave the Avenue. It soon became the role of the locals to develop the city in the usual way: privately. Thus was born a natural marriage of need: The feds long provided the locals their business, such as a demand for board and for printing, along with an inexhaustible supply of clerkships. In exchange, the locals built the nation its capital. Goode's history of this most public of all cities is thus a showcase of largely private places. There are the inevitable fancy mansions of the city's wealthy class, of course, but there are many more theaters, apartment buildings, stores, schools, and churches—the places in which every city lives through its innumerable private lives.

Did the locals do a good job for the nation? They might have done a better one if they'd served themselves better. For example, Washingtonians might have built themselves more of a stage on which to enjoy themselves. They chose otherwise. The city has never quite overcome a regional sense of conservative propriety; its role as the seat of power exacerbated this quality until it became an almost single-minded reach for dignity.

Not that Washington didn't enjoy itself. It gorged itself, often on dishes it invented (steamed oysters, say), and it famously liked drinking itself into a stupor (at one time, on the gin rickeys it invented). It even nurtured one of the country's prime punk scenes. But D.C. has long regarded most of its

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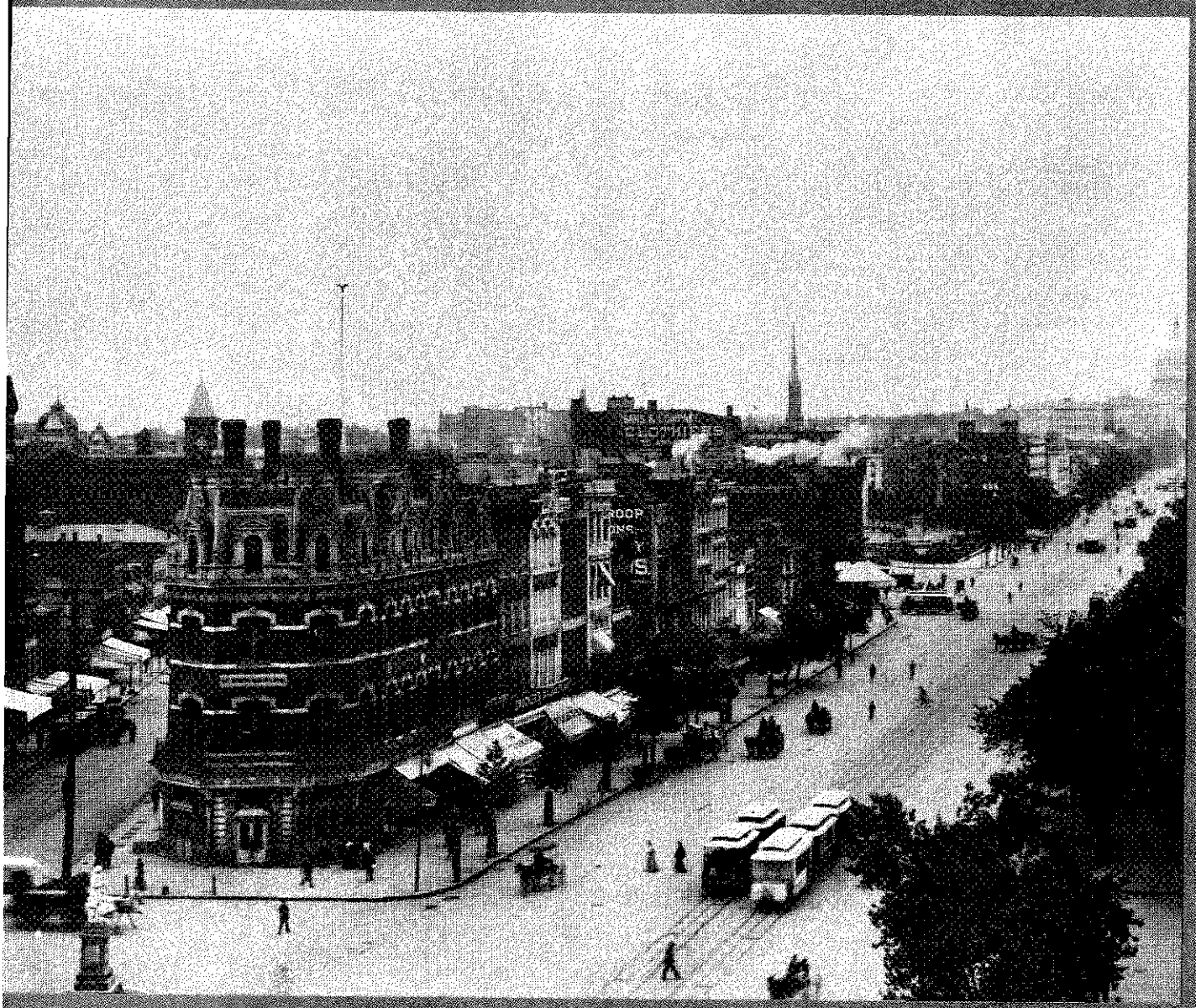

pleasures as private matters, rather than as matters to boast about, much less revel in. Washington's characteristic public reserve—architectural, retail, even stylistic—is visible on almost every page of Goode's work.

This reserve has made Washington a city of secrets, and it is at the private, secretive level that the city's federal and local lives are most intimately intertwined. The capital, which has only recently established a museum of local history, has allowed rather a lot of its own story to remain obscure.

Not so long ago, for example, you might have grabbed lunch at Harvey's, with its connection to the newly arriving Abe Lincoln, then had dinner that evening a few blocks up the Avenue at Marocco's, an Italian place doing business in what had been a 19th-century livery. It was in that building that a stable hand known as Peanut worked quietly for decades, despite his notoriety. Peanut was the man who held the getaway horse for John Wilkes Booth behind Ford's Theater as Booth, unknown to Peanut, was assassinating Lincoln. Booth forcefully kicked Peanut to the ground as he galloped away toward F Street, a story that Peanut told daily throughout his long life.

Harvey's is gone now, and so is the old livery that housed Marocco's. The Avenue these days is marbled and transformed according to a federal plan to achieve grandeur. If you take Pennsylvania Avenue now, it bypasses the marshy village and the middling town it once served. It's leading you to yet another Washington.

Charles Paul Freund (cpf@reason.com) is a reason *contributor.*

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Bare Virtue

Charles Paul Freund

Pepys Library, Magdalene College, Cambridge

PICTURED HERE IS a British woodcut of the 17th century; it's typical of hundreds that once illustrated the era's cheap ballad sheets. The most striking aspect of this nearly 400-year-old image is that it portrays a woman covered quite modestly, but for her bared breasts. Modern viewers might suppose they are looking at a period slattern, but the original audience likely would have seen the image very differently: as an illustration of virtue.

As the British historian Angela McShane Jones recently told *Discovery News*, exposed breasts "began as a very high-class fashion which demonstrated...classical ideals of female beauty. The husband of a woman dressed like this would be proud to have his classical beauty on display, and for a woman it was part of her honor that she could display her virtue in this way."

The virtuous nude has a long history, not only in woodcuts and in paintings with mythological themes but, as scholar Katharine Gillespie points out, in early republican portrayals of Lady Liberty too. Interestingly, bared limbs were not necessarily as virtuous as bared breasts; over the centuries, the body has been sexualized and desexualized in many different ways.

At a time when a naked breast brings cries of "indecency," such shifts in fashion can be revealing in more ways than one. ▯

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Where Else Can They Go?

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Now that we are gearing up for another presidential campaign, we should clear the air of one common misconception, namely, that the so-called median voter theorem tells the whole story by saying that candidates from the left and the right will gravitate toward the middle. This prediction rests on two basic propositions. The first is that voter sentiments, to the extent that they can be aligned on a single axis, take a bell-shaped form, with most voters concentrated in the middle. The second is that all voters, no matter where they are located in this one-dimensional space, will gravitate toward the candidate whose views are closest to their own. Given these two assumptions, each candidate in a two-person general election has an incentive to move from the middle of the distribution of his own party to the middle of the distribution of the electorate. In principle, that movement should continue until the two candidates just about touch each other.

The reason candidates migrate to the center is captured in the expression, where else can they go? Thus the voters on the right and left of the spectrum will dutifully stay with their candidate even as he marches toward the center. No matter how far the candidate strays, the unhappy voters at the edges will still vote their interest.

There is of course an undoubted kernel of truth in this analysis, for it helps explain some of the dizzying contradictions in electoral politics as candidates artlessly recalibrate their positions from the primary to the general election. But it is equally evident that this brief account does not tell the whole story, even if we grant the truth of its assumptions. Move as they may, the candidates on both sides still retain distinctive personas throughout the campaign. **What forces prevent perfect compression toward the median voter?**

The conceptual mistake in the standard analysis assumes that each voter has only a dichotomous choice between two candidates, so that the *intensity* of preference, as measured by the political distance between the preferred candidate and the voter, simply does not matter. That might be true in a world in which citizens only vote. But potential voters also supply financial support, free labor, and vocal support for their candidates. These critical elements significantly depend on the level of affection that any candidate for electoral office retains with her or his original base. If the disillusioned in the ranks even bother to vote for their candidate of choice, they may sit on their hands when it comes to funding, work, and advocacy. That lack of commitment could reduce resources and easily spell the difference between victory and defeat in a close election.

Obviously more is at work. Even so, just this one complication of the median voter theorem helps explains why politicians of all persuasions work desperately to be all things to all people. It is much easier to write about election campaigns than to run them.

—Richard A. Epstein

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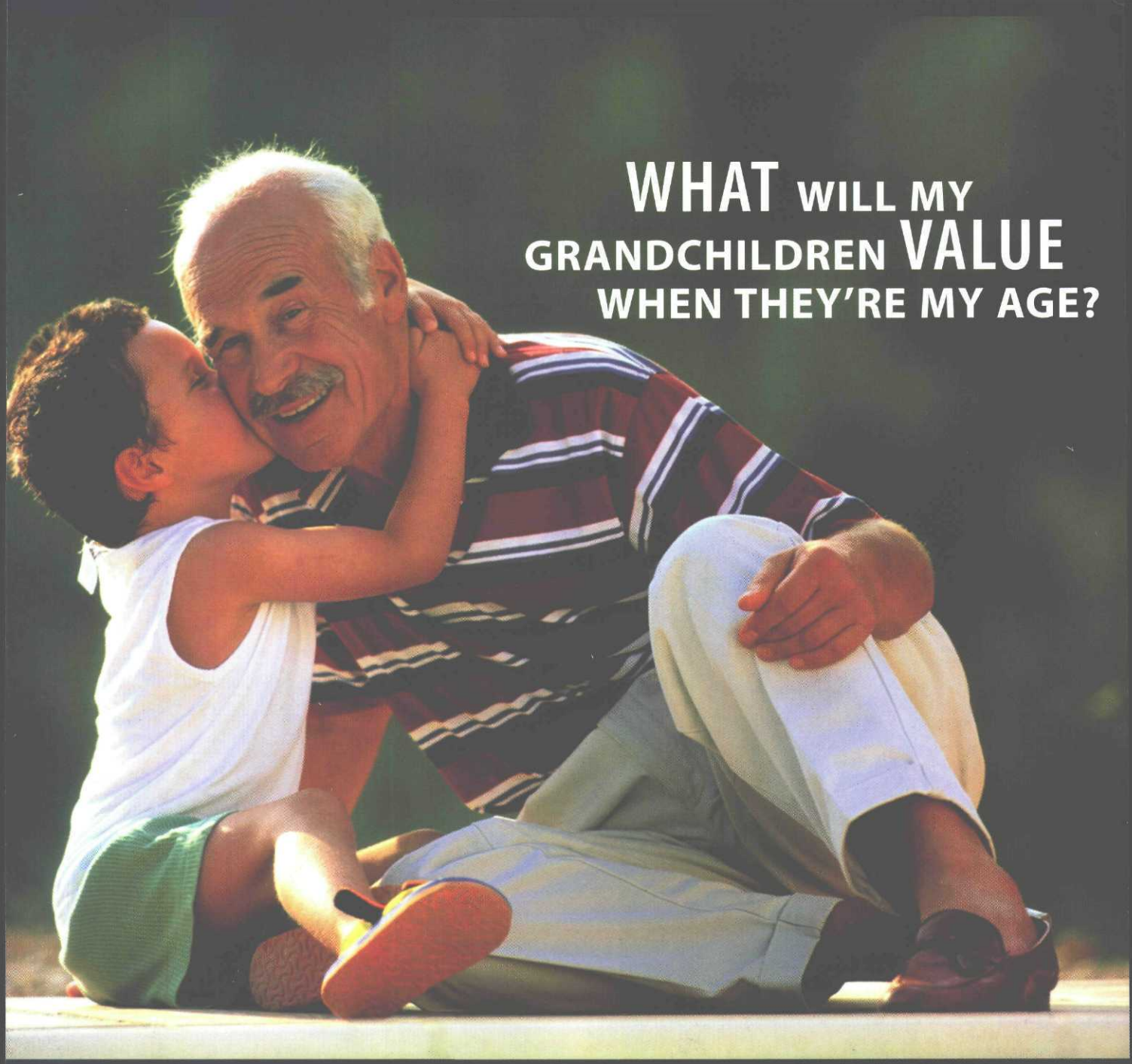

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